TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 132.

JOSEPH DALTON, PLAINTIFF IN ERROR,

vs.

ABRAHAM G. JENNINGS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 13, 1874.

SUPREME COURT OF THE UNITED STATES.

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INDEX.

	Original.	Print.
Subpœna ad respondendum	1	1
Bill of complaint	3	1
Answer	9	4
Replication	20	7
Amendment to answer	22	8
Replication to amended answer	25	9
Second amendment to answer	27	9
Testimony of Charles Wahlers	30	11
A. Fabre du Faur	35	14
William Larigan	38	16
A. Fabre du Faur, (recalled)	44	20
Lemuel T. Holmes	46	22
William J. Laidlaw	48	23
Complainant's exhibit A	51	25
B	53	27
D	54	27
Testimony of Mary Ann Brabson	55	28
James Newbold	60	30
John Windley	74	39
John Van Arsdale	95	51
Charles Wahlers, (recalled)	104	57
John Marr	105	57
Joseph Dalton	112	62
William Hauff	132	73
omplainant's exhibit S	137	76
K	138	76
Soar	139	77
U	140	77
G	141	78
Testimony of Thomas Hooton	143	78

	Original.	Print.
Testimony of George Osborne	148	81
Thomas Hall	154	84
Henry Williamson	157	86
Abraham G. Jennings	176	96
Henry G. H. Soar	205	110
Samuel Roebuck	216	115
John Robinson	220	117
Cause heard	226	119
Decision	227	120
Decree	234	122
Affidavit and order	236	122
Do	240	123
Petition on appeal	245	125
Bond on appeal	249	126
Notice to transfer exhibits, &c	252	126
Affidavit to transfer exhibits, &c	253	127
Stipulation to transfer exhibits, &c	255	127
Order to transfer exhibits to United States Supreme Court	257	128
Citation	259	128
Clerks' certificate	262	129

1 The President of the United States of America to Abraham G. Jennings, greeting:

You are hereby commanded, that you personally appear before the judges of the circuit court of the United states of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of November, A. D. 1872, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Joseph Dalton, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at the city of New York, on the 9th day of October, in the year one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-seventh.

[L. S.] KENNETH G. WHITE, *Clerk.*

J. VAN SANTVOORD, *Compl't's Sol'r.*

The defendant is required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of November, 1872, or the bill will be taken pro confesso against him.

K. G. W., *Clerk.*

2 SOUTHERN DISTRICT OF N. Y.,
City and County of N. Y.:

William T. Smith, being duly sworn, deposes and says, that on the 9th day of Oct., 1872, he served the within-named defendant and showed him the within original.

WM. T. SMITH.

Subscribed and sworn to before me this 9th day of Oct., 1872.

JOHN A. SHIELD, *U. S. Com.*

I hereby depute W. T. Smith to serve the within subpœna.

GEORGE H. SHARPE, *U. S. Marshal.*

OCT. 9, 1872.

Filed Feb. 6, 1873.

3 In the circuit court of the United States, southern district of New York. In equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

Joseph Dalton, a citizen of the United States, residing in the city of Brooklyn, New York, doing business in the city of New York, and a citizen of the State of New York, brings this his bill of complaint against Abraham G. Jennings, defendant, doing business at the city of New York, in said southern district of New York, and a citizen of the State of New York;

And thereupon your orator complains and says that heretofore, and before the fifth day of March, 1872, your orator was the first and original inventor and discoverer of a certain new and useful improvement in ladies' hair-nets, described in the letters patent dated March the fifth, 1872, hereinafter mentioned, and which was not known or used by others prior to his invention thereof, and which was not and

had not been at the time of his application for letters-patent therefor, as hereinafter mentioned, in public use or on sale with his consent and allowance, contrary to the provisions of the statutes of the United States in such case made and provided.

4 That your orator, being so as aforesaid the first and original inventor and discoverer of the said improvement, and being desirous to obtain an exclusive property in said invention or improvement, within and for the United States, did, on the fifth day of March, 1872, upon due application therefor, and having in all things complied with the conditions and requirements of the acts of Congress in such case made and provided, obtain letters-patent of the United States for said invention or improvement in due form of law, under the seal of the Patent-Office of the United States, signed by the acting Secretary of the Interior and countersigned by the Commissioner of Patents, bearing date the said fifth day of March, 1872, and numbered 124340, which said letters-patent are now remaining of record in the Patent-Office of the United States, by which said letters-patent there was granted and secured, or intended to be granted and secured, to your orator, his heirs or assigns, for the term of seventeen years from the said fifth day of March, 1872, the full and exclusive right and liberty of making using, and vending to others to be used, the said invention or improvement described in said letters-patent throughout the United States and the Territories thereof, as set forth in said letters-patent, as by said letters-patent, or a duly authenticated copy thereof, in court ready to be produced, will fully and at large appear, and that your orator, by virtue of the premises, became and is the sole and exclusive owner of said letters-patent and invention.

5 And your orator further shows that by reason of the said letters-patent your orator has been, ever since the issuing thereof as aforesaid, and is exclusively entitled to use, exercise, and enjoy all the exclusive rights, privileges, profits, and advantages granted and secured, or intended to be granted and secured, in and by said letters-patent, for and during the term of years in said letters patent mentioned.

And your orator further shows unto your honors, that the said invention or discovery, so patented as aforesaid unto your orator, is very valuble and useful to the public, and that the same has been extensively introduced into public use, and that the public have generally acquiesced in your orator's exclusive right to the same, and your orator would, but for the wrongful acts of the said defendant and others acting in concert with him, have made large gains and profits from the manufacture, use, and sale of the said invention, which he has been and is now hindered from making by reason of said wrongful acts of the said defendant.

6 And your orator further shows unto your honors, upon information and belief, that the said defendant, Abraham G. Jennings, well knowing the premises, and the rights and privileges secured unto your orator, and in order to deprive him of the profits, benefits, and advantages which might and otherwise would have accrued to him at the city of New York, and elsewhere, and within the said southern district of New York and without the license or permission of your orator, has since the fifth day of March, 1872, and at divers times since that time, and before the commencement of this suit, unlawfully and wrongly made or caused to be made, sold or caused to be sold, used or caused to be used, hair-nets containing the said invention or discovery and improvements, or substantial or materal parts thereof, described and patented in said letters-patent number 124340, the exclusive right to

which is secured to your orator, as hereinbefore set forth, and which said unlawful making, use, and sale by the defendant as aforesaid are a violation and infringement of your orator's exclusive rights and privileges under said letters patent as aforesaid, and that the said defendant still continues so to do, in defiance of your orator's said rights and privileges and to your orator's great and irreparable loss and injury, and by which your orator has sustained and been put to great loss and damage, and has been and still is deprived of great gains and profits, which your orator might, and otherwise would, have obtained and received, but which have been received and enjoyed and are being received and enjoyed by the said defendant by and through his aforesaid unlawful acts and doings; and that the said defendant has derived and received, and is still deriving and receiving, from such use great gains and profits, but to what amount your orator is ignorant and cannot set forth, but your orator believes the same to be about the full sum of five thousand dollars, and so charges the fact to be, and prays that the said defendant may be required to make a discovery as to his use of said invention, and of all gains and profits received by him therefrom, or by means thereof.

And your orator further shows unto your honors that the aforesaid using of said invention by the said defendant and his confederates, and his preparation and determination to continue the same, and the aforesaid unlawful and wrongful acts, have the effect to encourage and induce other persons to infringe and defy the letters-patent as aforesaid, and the aforesaid exclusive rights and privileges of your orator.

And your orator further shows unto your honors that the said defendant has been warned, and requested and notified, to desist and refrain from said infringement and said unlawful and wrongful acts, but that said warning and request and notice have been wholly disregarded by said defendant, and that said defendant still continues the infringement and unlawful and wrongful acts aforesaid.

And your orator prays that the said defendant may be compelled, by a decree of this honorable court, to account for and pay over unto your orator all such gains and profits as have accrued or arisen to, or have been earned or received by, the said defendant, and all damages your orator has sustained by reason of the said infringements by the said defendant.

7 And that the said defendant, Abraham G. Jennings, his agents, attorneys, servants, and workmen, be enjoined and restrained by the order and injunction of this court from directly or indirectly making or causing to be made, using or causing to be used, or vending to others to be used, in any manner, any hair-nets containing or embodying, or in any way counterfeiting or imitating, the said invention described and secured in said letters-patent so granted as aforesaid to your orator, and from infringing upon or violating the said letters-patent by the use or sale of the said hair-nets or said patented improvement in any way whatever, and that all such infringing hair-nets in the possession of said defendant may be forthwith destroyed or delivered up to your orator, and that the said defendant may be decreed to pay the costs of this suit, and that your orator may have such other or further order or relief as to this honorable court shall seem meet and shall be agreeable to equity.

To the end, therefore, that the said defendant, Abraham G. Jennings, may, if he can, show why your orator should not have the relief hereby prayed, and may upon his corporal oath true and direct and perfect answer make, according to the best of his, or his agents, clerks, serv-

ants and workmen's knowledge, remembrance, information, and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were here repeated, paragraph by paragraph, and he and they thereto severally and specifically interrogated.

May it please your honors to grant to your orator a writ of subpœna ad respondendum, issuing out of and under the seal of this honorable court, directed to the said defendant, Abraham G. Jennings, commanding him, by a certain day, and under a certain penalty, to be and appear in this honorable court, then and there to make answer unto this bill of complaint, and to perform and abide by such order and decree herein as to this court may seem meet and agreeable to equity.

And your orator will ever pray, &c.

J. DALTON.

J. VAN SANTVOORD,
Comp's Sol'r, and of Counsel.

8 UNITED STATES OF AMERICA,
County of New York, Southern District of New York, ss:

Joseph Dalton, the complainant in the foregoing complaint named, being duly sworn, deposes and says, that he has heard read the foregoing bill of complaint by him subscribed, and knows the contents thereof, and that the same are true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true. And he further deposes and says that he verily believes that he, the said Joseph Dalton, is the first and original inventor or discoverer of the invention or improvement patented to him, as set forth in said bill of complaint, and that the same has not, to the best of his knowledge, information, and belief, been in use, or been described before the invention thereof by him.

J. DALTON.

Subscribed and sworn to before me this 7th day of October, 1872.

CLARENCE CARY,
Notary Public New York City & County.

(Endorsed:) Cir. court U. S., south. dis. of N. Y. Joseph Dalton agt. Abraham G. Jennings. Bill of complaint. J. Van Santvoord, compl't's sol'r. Filed October 9, 1872.

9 United States circuit court, southern district of New York. In equity.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

The answer of Abraham G. Jennings, defendant, to the bill of complaint of Joseph Dalton, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answer saith:

That the said complainant is not the first or original inventor and

discoverer of a new and useful improvement in ladies' hair-nets, as alleged in complainant's said bill of complaint, and that the letters-patent, dated March the fifth, 1872, and referred to in complainant's said bill of complaint, do not contain the description of a new and useful improvement in ladies' hair-nets, as alleged in complainant's said bill of complaint.

And this defendant, further answering, says, that he has been informed, and believes it to be true, that upon application by the complainant, letters-patent were granted and issued to the complainant on the fifth day of March, 1872, for an alleged new and useful improvement in ladies' hair-nets; but denies that it was either new or useful, or an improvement.

And this defendant says, that he does not know, and is not informed, save by said bill of complaint, whether or not said Joseph Dalton did properly make application for said patent, and did comply with all the requirements of law, and did have said patent issued to him in due form of law, whether or not the said complainant is a citizen of the State of New York, as alleged in said bill of complaint, and whether or not the said complainant is the sole and exclusive owner of said letters-patent, and leaves the complainant to make such proof thereof as he shall be advised is material.

And this defendant, further answering, says, that he is informed, and believes it to be true, that for the purpose of deceiving the public, the description and specification filed by the said Joseph Dalton in the Patent-Office, and contained in the said letters-patent, was made to contain less than the whole truth relative to his alleged invention, in this, that it sets forth that the meshes are "made of double strands which pass through each other as shown in figure 2."

And this defendant, on information and belief, says, that hair-nets cannot be made in accordance with the method described in the said letters-patent; that the specification annexed to said letters-patent is incomplete and ambiguous, and the said specification does not show the method of making the hair-nets alleged to be invented by said complainant, in such full, clear, and exact terms as to enable any person skilled in the art to which it appertains to make the same.

And this defendant, further answering, denies, on information and belief, that the public generally, or any portion thereof, have acquiesced in and acknowledged the complainant's right to the alleged invention so patented to said complainant, or any portion thereof.

And this defendant, further answering, says, that it is not true that the said Joseph Dalton was the original and first inventor and discoverer of the said alleged invention or discovery, or of any material and substantial part of the thing, or of the principle and combination patented in any by the letters-patent mentioned in the said bill of complaint; but that the same thing and principal had been previously made, used, and sold by this defendant, who resides at No. 16 Garden Place, in the city of Brooklyn, in the State of New York, and that the same was known to and made, and publicly sold by this defendant, as early as the year 1867 and thereafter, and therefore prior to the time when it is alleged in the said bill of complaint the same was invented and discovered by Joseph Dalton, patentee as aforesaid, and that the following-named persons, to wit: Thomas Hall, residing at No. 87 Railroad avenue, Jersey City, in the State of New Jersey, George Osborne, residing at No. 48 Underhill avenue, Brooklyn, in the State of New York; Thomas Hooton, of No. 29 Rose street, New York City, in the State of New York; W. B. Mead, of No. 350 Broadway, New York City,

in the State of New York, and others, knew of such prior use, manufacture, and sale by this defendant and by others of the thing wrongfully patented by the complainant. And this defendant, on information and belief, says, that the same thing, principle, and combination was, many years prior to the time when, as is alleged in the said bill of complaint, the same was invented and discovered by Joseph Dalton, patentee as aforesaid, known to and publicly used by all the dealers in and manufacturers of nets in the United States, and amongst whom are the following-named persons, to wit: Samuel Roebuck, No. 58 Fulton st., New York, in the State of New York; Thomas G. Voorhies, of No. 559 Sixth avenue, William I. Blake, of No. 224 Canal street, A. McLean, of No. 256 West 22nd street, Abram Steinam, of No. 18 White street, James Thompson, of No. 438 West 32nd street, all in the city of New
14 York, in the State of New York; Henry G. Loar, of corner of Kent avenue and South Eleventh street, Brooklyn, in the State of New York; Thomas Hooton, above named, and to many other persons in the United States and Europe, but whose names and residences, or places of business, he prays to disclose as soon as ascertained.

And this defendant, further answering, says, that he is informed, and believes it to be true, that the said alleged invention and discovery, and the same principle and combination, and all substantial parts thereof patented, in and by the letters-patent mentioned in the bill of complaint, was in public use and on sale in the United States at the manufacturing establishment of this defendant at Steuben st., Jersey City, in the State of New Jersey, and at his subsequent places of business at No. 49 Barclay st., New York, in the State of New York, by this defendant, and at No. 559 Sixth avenue, New York, in the State of New York, by Thomas G. Voorhis, and at No 58 Fulton st., New York, above named, by Samuel Roebuck, and by nearly all other dealers in or manufacturers of nets in the United States, and had been in such use and on sale throughout the United States for more than two years before the date of
15 the alleged application of Joseph Dalton, patentee as aforesaid, for a patent therefor.

And this defendant, further answering, says, on information and belief, that the said patent was obtained by the said complainant unjustly and surreptitiously, by unfairly representing himself to be the original and first inventor of a net, which said representation was wholly false and untrue.

And this defendant, further answering, says, that the said complainant has not been in the exclusive and sole possession of the said alleged improved net, but that the same was in public use, and publicly and generally known, three and more years prior to the time of the said complainant's application for letters-patent.

And this defendant, further answering, says, that he is informed, and believes it to be true, that the said alleged invention and discovery, as far as relates to the design or configuration of the same, *is* illus-
16 trated in complainant's said letters-patent mentioned in the bill of complaint aforesaid, was already shown and illustrated in the letters-patent granted and issued on the twenty-seventh day of November, 1855, to James O. Morse and Julin W. Adams, who resided at New York, in the State of New York, and prior to the supposed invention and discovery thereof by Joseph Dalton, the patentee as aforesaid.

And this defendant, further answering, says, that he has a right to make, to use, and vend the alleged improved ladies' hair-net, for that the alleged improved net was publicly used, made, and vended three and more years prior to the time of the said complainant's application for his said letters-patent.

And this defendant, further answering, says, that in view of the premises, this defendant has and had a right to make, use, and vend said alleged improved ladies' hair-net, and that the granting of said letters-patent to the complainant for his pretended improved ladies' hair-net does not prevent this defendant from making, using, and vending said alleged improvement, as the said letters-patent were unfairly and unjustly obtained through the false and fraudulent representations and
17 means of said complainant, and therefore the said letters-patent are of no avail or effect, either in law or equity.

And this defendant, further answering, says, that in view of the premises, and because the method described in said complainant's letters-patent cannot be carried into effect, the ladies' hair net made by this defendant is necessarily made by a method entirely different from that described in said letters-patent, and that he has not infringed and still does not infringe upon the rights or privileges alledged in said bill of complaint to be secured to the complainant by said letters-patent.

And this defendant, further answering, denies that he has ever contrived to injure said complainant, or to defraud him of any profits, benefits, or advantages whatsoever, and denies all and all manner of unlawful confederacy wherewith he is by the said bill charged.

All of which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

A. G. JENNINGS.

18 A. V. BRIESER,
Att'y & Counsel.
A. PRENTICE,
Att'y & Counsel per Deft., 202 Broadway, N. Y. City.

UNITED STATES OF AMERICA,
Southern District of New York:

Abraham G. Jennings, being duly sworn, deposes and says, that he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

Subscribed and sworn to before me this 2' day of Dec'r, 1872.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

19 (Indorsed:) U. S. circuit court, southern district N. Y. Equity Joseph Dalton vs. Abraham G. Jennings. Defendant's answer. A. W. Brieser, att'y for defendant. Filed Dec. 21, '72.

20 U. S. circuit court, southern district of New York. In equity.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

The replication of the above-named complainant to the answer of Abraham Jennings, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which

may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say' that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all of which matters and things this re-
21 pliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. VAN SANTVOORD,
Solicitor for Complainant.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. Jos. Dalton vs. Abraham Jennings. In equity. Replication. J. Van Santvoord, compl't's sol'r. Filed Dec'r 24, 1872.

22 United States circuit court, southern district of New York. In equity.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

The answer of Abraham G. Jennings, defendant, to the bill of complaint of Joseph Dalton, complainant, which answer was duly filed with the clerk of the court the third day of December, A. D. one thousand eight hundred and seventy-two, is hereby amended by inserting on the seventh page thereof, after the words "by Joseph Dalton, the patentee as aforesaid," the following, to wit: "And this defendant, further answering, says that he is informed, and believes it to be true, that the said alleged invention and discovery, and the same principle and combination patented in and by the letters-patent mentioned in the bill of complaint aforesaid, was fully shown on the twenty-second day of May, 1871, in the "designs office" of Great Britain, at No. 1 Whitehall street,
London, England, where it was publicly registered by and on be-
23 half of Messrs. Pratt, Hurst and Company, a firm doing business at Nottingham, England; also, on the twenty-sixth day of July, in the same "designs office" of Great Britain, and there publicly registered by and on behalf of the firm of Pratt, Hurst and Company above named; also, on the first day of September, 1871, in the same "designs office" of Great Britain, and there publicly registered by and on behalf of the firm of Pratt, Hurst and Company above named; and that the three said public registries of the twenty-second day of May, 1871, and twenty-sixth day of July, 1871, and first day of September, 1871, were respectively numbered 252710, 254249, and 255339; and that they were prior to the supposed invention and discovery thereof by Joseph Dalton, the patentee aforesaid, and prior to his application for letters-patent of the United States, on public record in the Kingdom of Great Britain and Ireland, at the city of London aforenamed.

ABRAHAM G. JENNINGS.

A. V. BRIESEN, *Defendant's Sol'r*, 189 *Broadway, N. Y.*

24 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Abraham G. Jennings, being duly sworn, deposes and says that he is

the defendant named in the foregoing amendment to his answer, subscribed by him, that he has read the same, and verily believes the matters therein stated to be true.

A. G. JENNINGS.

Subscribed and sworn to before me this 4th day of January, 1873.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

(Endorsed:) Circuit court U. S., south. dist. of N. Y. Joseph Dalton vs. Abraham G. Jennings. Amendment to defendant's answer. A. V. Briesen, deft's solr.

File this amendment nunc pro tunc as of the day the original answer was filed.

Jan'y 11, 1873.

(Signed) SAML. BLATCHFORD.

Filed Jan'y 11, 1873, (nunc pro tunc as of Dec'r 2, 1872.)

25 U. S. circuit court, southern district of New York. In equity

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

The replication of the above-named complainant to the amended answe of Abraham G. Jennings, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto; and the said amended answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant without this; that any other matter or thing whatsoever, in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which mat-
26 ters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. VAN SANTVOORD,
Solicitor for Complainant.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. Joseph Dalton vs. Abraham G. Jennings. Replication to amended answer. J. Van Santvoord, solicitor for complt. Filed Jan'y 18, 1873.

27 United States circuit court, southern district of New York. In equity.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

The answer of Abraham G. Jennings, defendant, to the bill of complaint of Joseph Dalton, complainant, is hereby amended by inserting therein, on page 4, after the words "350 Broadway, New York City, in

the State of New York," the following, to wit: "Henry Williamson, of 82 Wythe avenue, Brooklyn, E. D., New York;" also, by inserting on page 5, after the word "ascertained," the following, to wit: "and amongst whom is Henry Williamson, of 82 Wythe avenue, Brooklyn, E. D., New York."

ABRAHAM G. JENNINGS.

A. V. BRIESSEN,
Defendant's Solicitor.

UNITED STATES OF AMERICA,
Southern District of New York:

Abraham G. Jennings, being duly sworn, deposes and says that he is the defendant named in the foregoing amended answer, sub-
28 scribed by him, that he has read the foregoing amendment to the answer, and that he verily believes it to be true.

ABRAHAM G. JENNINGS.

Sworn to before me this 31st day of March, 1873.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

29 It is hereby stipulated between counsel that the foregoing amendment to the answer of Abraham G. Jennings, defendant, be filed without objection as part of the original answer, and the *the* filing of a new replication to this amended answer is hereby waived.

New York, March 31, 1873.

J. VAN SANTVOORD,
Compl't's Sol'r.
A. V. BRIESEN,
Deft's Solicitor.

(Endorsed:) U. S. circuit court, southern district of New York. In equity. Jos. Dalton vs. A. G. Jennings. Second amendment of defendant's answer. Filed (nunc pro tunc as of Dec'r 2, 1872) March 31, 1873.

It is hereby ordered that this amendment be filed nunc pro tunc, as of the day the original answer was filed, and that the waiver of replication be confirmed.

(Signed) SAML. BLATCHFORD.

MARCH 31, 1873.

30 Circuit court of the United States for the southern district of New York. In equity.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

Testimony taken on the part of the complainant for final hearing, under the 67th rule of the Supreme Court, in equity, R. E. Stilwell, examiner.

TUESDAY, *March 11th*, 1873.

Present: J. Van Santvoord, esq., counsel for complainant; Arthur Briesen, esq., counsel for defendant.

Adjourned to the 18th inst., at 3 p. m.

TUESDAY, *March 18th*, 1873.

Present: Counsel as before.

(Counsel for complainant offers in evidence letters-patent of the United States No. 124340, granted March 5th, 1872, to Joseph Dalton for improvement in ladies' hair-nets, and the same is marked "Complainant's Exhibit A." And it is consented by counsel for respective parties that a certified copy thereof may be substituted as such exhibit in place of the original patent.)

CHARLES WAHLERS, called and sworn as a witness on the part of complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Charles Wahlers; age, 18. I am employed as clerk by Van Santvoord and Hauff, No. 41 Park Row. I reside at No. 58 Willett street, New York.

Q. 2. Did you ever serve any written notice upon the defend-
31 ant? And, if so, can you produce a copy thereof, and state when the same was served and whether the same was served personally upon the defendant or how otherwise?

A. I did serve a notice. I produce a copy of it. Mr. Jennings being absent from his place of business, I left such copy with his clerk at his place of business, on May 8th, 1872, as appears by a memorandum on this copy of such notice in my handwriting.

(The copy of notice produced by the witness is now offered in evidence by complainant's counsel, and is marked "Complainant's Exhibit B.")

Q. 3. Did you ever purchase from Charles Rogers & Co., of this city, any hair-nets; and, if so, when? And will you produce the same, or some of them? And if you obtained a bill of sale thereof, will you produce such bill?

A. I did purchase these hair-nets I now produce September 26th, 1872. I obtained a bill of sale of same, which I also now produce.

(The package of hair-nets is produced in evidence, and marked "Complainant's Exhibit C," and the bill of sale produced by witness is also put in evidence, and marked "Complainant's Exhibit D.")

Q. 4. In whose handwriting is the endorsement on the back of Exhibit D, beginning at the word "bought" and ending at the words "Charles Wahlers?"

A. It is in my handwriting, and said name is my signature.

Q. 5. At the time you purchased the hair-nets you have produced, did you learn by whom the same were manufactured, or from whom they were obtained by Charles Rogers & Co.? And, if so, state what information was given you about the same, and who gave you such information.

(Objected to as hearsay evidence.)

—. They were represented to me by the salesman from whom I bought them as nets made by Abraham G. Jennings, the defendant in this suit.

(Objected to as above.)

Cross-examined by Mr. Briesen:

X Q. 6. What is the name of the salesman from whom you bought these nets, Exhibit C?

A. I don't know.

X Q. 7. Did he tell you that these nets were from Mr. Jennings, or did he add the Christian name when speaking of him?

32 A. I can't state positively; but I can say that I saw Mr. Jennings, mark on the box from which he took these nets.

(The latter part of answer objected to as volunteered.)

X Q. 8. What kind of a mark was that?

A. I think it was the Nantucket Manufacturing Company.

X Q. 9. Where did you keep these nets (Exhibit C) since you bought them?

A. They were in Mr. Van Santvoord's desk in our office.

X Q. 10. By what do you know that the Nantucket Manufacturing Company is the mark of Mr. Jennings?

A. I have seen the inscription on his sign, at his place of business in Howard street, on two occasions.

Direct resumed:

Q. 11. Was any remark addressed by any other person in Rogers' store to the salesman who told you these nets were made by Mr. Jennings; if so, what was said, if anything, in relation to Mr. Jennings having made these nets?

(Objected to as suggestive and as hearsay evidence.)

A. Nothing further than that he should not have had Mr. Jennings' name put on the bill of sale, which was taken from me and the present one substituted. The name of this gentleman I don't know, but I presume he is one of the firm of Rogers & Co.

(The latter part of answer objected to as volunteered.)

Q. 12. Did he give any reason to the salesman for this rebuke?

(The like objection.)

A. I believe he said Mr. Jennings would not like it, or something to that effect.

Cross-examination resumed:

X Q. 13. Do you remember which Mr. Jennings he spoke of?

A. I understood him to mean the Mr. Jennings who made these nets.

CHARLES WAHLERS.

Subscribed and sworn to before me this 18th day of March, 1873.

R. E. STILLWELL,
Examiner.

Adjourned to the 22d inst., at 11 a. m.

33 SATURDAY, *March 22d*, 1873.

Present: Counsel as before.

Adjourned to the 31st inst., at 1½ p. m.

MONDAY, *March 31st*, 1873.

Present: Counsel as before.

Adjourned to the 5th April, 1873.

SATURDAY, *April 5th*, 1873.

Present: Counsel as before.

CHARLES WAHLERS recalled by the complainants.

Q. 1. You stated to me on the day of your former examination that you had discovered an error in one or more of your answers. State what error, if any, you discovered in such answers.

A. The error consists in the words "Na'tucket Manufacturing Company," referred to in my answer to the 8th cross-interrogatory and cross-question 10; that should be "Nottingham Lace Works" instead.

Q. 2. How came you to mistake that name?

A. It had escaped my memory.

Q. 3. When did you discover this mistake?

A. After leaving here, on the same day.

Cross-examined by Mr. Briesen:

X Q. 4. By what means did you refresh your memory?

A. On reaching our office I looked at a city business directory, and on my way home I passed Mr. Jennings' place in Howard street and looked at his sign.

X Q. 5. Did you, since giving your former testimony, call on Messrs. Rogers & Co., of this city?

A. I did not.

X Q. 6. You did, therefore, not re-inspect the box from which the nets, complainant's Exhibit C, were taken, did you?

A. No.

X Q. 7. Do you know how many lace-works there are in Nottingham?

A. I do not.

X Q. 8. Are you able to distinguish the marks of the several lace-works in Nottingham from each other?

34 A. No, sir.

X Q. 9. Do you know, from your own knowledge, where Rogers & Co. obtained or purchased the box from which the nets, complainant's Exhibit C, were taken?

A. Not from my own knowledge.

X Q. 10. Do you know, from your own knowledge, whether Rogers & Co. purchased these nets, Exhibit C, in said box, or whether they placed them there after having bought them?

A. I do not.

X Q. 11. Do you know, from your own knowledge, whether Rogers & Co. bought or obtained that box from which these nets were taken, from A. G. Jennings, the defendant in this case?

A. No, sir.

X Q. 12. Do you know, from your own knowledge, from whom Rogers & Co. bought or obtained those nets, Exhibit C?

A. Not from my own knowledge.

X Q. 13. Did you ever buy hair-nets besides those marked Complainant's Exhibit C?

A. I did.

X Q. 14. Who did you buy them from?

(Objected to as irrelevant.)

A. I bought some from Rogers & Co., and also from Mr. Harden of this city.

X Q. 15. What became of those you bought from Mr. Harden?

A. They are at our office.

X Q. 16. Are they similar to the nets marked "Exhibit C"?

A. They are constructed on the same principle.

X Q. 17. By what mark or device do you distinguish the nets you bought from Mr. Harden from those you purchased from Rogers & Co.?

(Objected to as irrelevant, and also because there are no hair-nets present purporting to be Mr. Harden's.)

A. There is a little difference between the nets; the difference is in the meshes, and I think also in the color.

X Q. 18. Are you quite positive, then, that those nets, Exhibit C, were purchased from Rogers & Co., and not from Mr. Harden?

A. I am positive.

CHARLES WAHLERS.

Subscribed and sworn to before me this 5th April, 1873.

R. E. STILWELL, *Examiner, &c.*

35 A. FABER DU FAUR, called and sworn as a witness on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is A. Faber Du Faur; my age is 47; my residence, Newark, New Jersey; and occupation, a metallurgist and engineer.

Q. 2. Have you acted as expert in patent causes in the United States court; and, if so, to what extent?

A. I have during the last five years acted as expert on a considerable number of causes.

Q. 3. Have you examined and do you understand complainant's patent, Exhibit A? and, if yea, state what invention you find described and specified in the claim of said patent.

(Objected to as incompetent.)

A. I have examined the letters-patent referred to. The object of this invention is to fill up the coarse meshes of a hair-net, so as to prevent the short hair from protruding through it without at the same time covering too much of the surface by the fabric. This is accomplished by a series of fine threads crossing each other in different manners between the coarse meshes. The different figures show different manners in which the threads may cross each other. In addition to this, the inventor shows and describes an arrangement where the meshes are so formed that either the coarse or fine threads can be entirely broken away without destroying the other, but the inventor does not confine himself to the precise method of forming the meshes.

Q. 4. In the first question I inadvertently omitted the words "in the specification" after the word "described." I will therefore ask you now to state what, as you understand it, is the invention described in said patent.

A. I understood the question to refer to the whole patent, and in my answer I stated what I understood the invention to be. I therefore repeat my answer, and request the same to be considered an answer to this question.

Q. 5. Please look at the nets marked "Exhibit C," and state whether or not you find therein the invention, or any part thereof, which is described in complainant's patent Exhibit A, and give your reasons for any opinion you may express.

A. I find in Exhibit C hair-nets where the coarse meshes are filled up so as to prevent short hair from protruding through, and this is accomplished by the same means described in complainant's patent, namely, by a series of finer threads crossing each other between the coarse meshes. Exhibit C does not show the additional arrangement described in complainant's patent, of having the meshes so formed that
36 either set may be entirely broken away without destroying the other, and may in this respect be considered inferior to hair-nets containing both features of complainant's invention, although the same in general appearance.

Q. 6. Look at complainant's Exhibit E, and state what the same is.

A. This is a hair-net containing both features of complainant's invention as described in the patent. This Exhibit E was given to me by Mr. Dalton, at his place in Hudson street, and I handed it to Mr. Van Santvoord.

Cross-examined by Mr. Briesen, counsel for defendant.

X Q. 7. Does the patent, complainant's Exhibit A, in your opinion, specify the degree of difference between the coarse and fine threads?

A. I do not find it specified. I only find the statement that by prefer-

ence that very fine silk threads are used, so that the same are invisible when the nets are worn, and at the same time effectually hold down the hair. The drawings show different proportions.

X Q. 8. If both kinds of thread were made of equal thickness, would that, in your opinion, still retain the net as coming within the description of this patent, if otherwise all parts were arranged alike?

A. If the pillars of the auxiliary meshes were of the same thickness as the pillars of the other meshes, the arrangement might only contain the second feature of the invention described in complainant's patent; that is to say, the net might be so formed that one set of meshes might be entirely broken away without destroying the other.

X Q. 9. Do you mean to say that both features of the invention, as you explain it, should necessarily be combined in order to produce the article patented by the complainant?

A. I do not pretend to give a legal opinion as to the scope of the claim. The specification describes the article, and I find the following expression in the specification: "But I do not confine myself to the precise method of forming the meshes."

X Q. 10. Please examine the complainant's Exhibit E, and state whether the meshes in the same are made of double strands which pass through each other.

A. They are; one of the fine threads passes through and the other goes over the top of the coarse pillar.

X Q. 11. Are you acquainted with the construction of lace-machines, and their operation?

A. I have a general knowledge of the same.

X Q. 12. Would it, in your opinion, be possible so to adjust the bobbins and other parts of a lace-machine for producing a fabric with threads crossing each other diagonally or at right angles, all of which
37 threads are in double strands, to interlock at every junction, and so that the double strands from one direction pass through those which cross it, and vice versa?

A. I am not prepared to give a positive answer without time for consideration. The production of the cords, Jacquard machine is a specialty, and I know that persons giving their whole attention to this specialty sometimes have to spend considerable time in making the proper arrangements for special objects.

X Q. 13. Your present knowledge of lace-machines does not lead you to consider it impossible that the double-strand threads should pass through each other wherever they cross each other, does it?

A. I do not want to give a positive assertion as to its impossibility.

X Q. 14. How long have you been acquainted with the construction and operation of lace machines?

A. I can't possibly fix the time as to the construction; I have only seen them in operation lately.

X Q. 15. Have you known their construction before seeing them in operation?

A. I have had a general knowledge of them.

X Q. 16. Please state from the specification of complainant's patent, Exhibit A, that portion which directs how the alleged invention therein described is to be carried into effect.

A. The specification does not restrict itself to any specific method of carrying the invention into effect. I quote from the patent: "But I do not confine myself to the precise method of forming the meshes. They may in some cases be composed of three or more strands, united by ty-

ing in any manner at the ties, and of varying qualities and color of thread." This may be done by tying by hand. or by any other means.

(The first part of the answer objected to as volunteered.)

X Q. 17. You have not answered my question, and have only quoted from the specification the passages following the direction how the invention should be carried into effect, and how the complainant's patent states it is preferred to carry it into effect. Please quote that portion preceding your last quotation.

A. "The meshes *a*, as well as the meshes *b*, are by preference made of double strands, which pass through each other as shown in fig. 2, they being fabricated in a manner well known to lace-manufacturers."

X Q. 18. Is such a manner of fabrication well known to you, as an expert in lace manufacture?

A. I do not understand that the specification says that this specific arrangement was well known to lace-manufacturers, but that the means for producing such a fabric were known to the lace-manufacturers.

38 X Q. 19. Are the means of passing double strands through each other known to you?

A. The figure 2 referred to in the specification does not show top and bottom views, and so far represents the fabric in Exhibit E.

The further examination of Mr. Faber du Faur adjourned to 7th, at 1.30 p. m.

WILLIAM LARIGAN, being duly sworn on part of complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. William Larigan; age, 17 years; residence, 104 Leonard st., New York City; I am a clerk in the fancy goods business of Charles Rogers & Co., 317 Canal street, New York City.

Q. 2. How long have you been with them?

A. Since 16th August. 1870.

Q. 3. Do you deal in ladies' hair-nets?

A. Yes, sir.

Q. 4. Has the firm of Rogers & Co. dealt in hair-nets manufactured by Joseph Dalton?

(Objected to as incompetent and hearsay.)

A. Yes, sir.

Q. 5. Look at the net now shown you, and state, if you know, who is the manufacturer of such net.

A. Mr. Dalton is the manufacturer.

(Counsel for complainant offers the net shown to witness, and the card on which the same is placed, in evidence, and the same is marked "Complainant's Ex. E., R. E. S., ex'r.")

Q. 6. Have you any hair-nets, or samples thereof, of Mr. Dalton's, in your store, like Exhibit E?

A. We have a sample.

Q. 7. Have you had in your store, during the time you have been with Rogers & Co., any ladies' hair-nets of similar construction to Exhibit E of other manufacturers or dealers besides Mr. Dalton; and, if yea, of what other manufacturers or dealers?

(Objected to as hearsay.)

A. Yes, sir; A. G. Jennings, and a man by the name of C. F. Harden, I think, of 74 Franklin, and Thos. Hootan, of 29 Rose st.; Thos. Hootan's net is a cotton net.

39 Q. 8. Where is Jennings' place of business?

A. 33 Howard street.

Q. 9. By what name were Mr. Jennings' nets known, which were, as you say, like the net Exhibit E?

A. Duplex and Duplex A; they are not exactly like it; they are a little closer—similar.

Q. 10. Look at the net or nets marked on the card "Complainant's Exhibit C," and state how the same compare with the net of Mr. Jennings, of which you have spoken.

(Objected to as calling for an opinion.)

A. This is A. G. Jennings' nets.

Q. 11. Have you now in your store any of Mr. Jennings' nets of the same description as Exhibit C?

(Objected to as hearsay.)

A. No, sir; not as I know of; we have none for sale.

Q. 12. Down to what time did you have such nets of Jennings' in your store?

(Same objection.)

A. I think we had them as late as January, 1873, but I am not sure.

Q. 13. What became of those nets of that description of Mr. Jennings' which you had on the 1st of January, 1873, or thereabouts?

(Same objection, and as indefinite.)

A. We returned them to Mr. Jennings.

Q. 14. About what time were they returned to Mr. Jennings?

(Same objection.)

A. About the 1st of January, 1873.

Q. 15. Of whom did the firm, Chas. Rogers & Co., obtain the nets of which you have spoken as Mr. Jennings' nets, and which you say were similar to complainant's Exhibit C?

(Same objection.)

A. I could not say who he got them from; they came from Mr. Jennings—I could not say whether of him or one of his clerks.

40 Cross-examined by Arthur V. Brieson, esq., counsel for defendant.

X Q. 16. Are you personally acquainted with Mr. A. G. Jennings?

A. I know him very well, but he doesn't know my name; he knows me by sight.

X Q. 17. Did you ever buy nets from him?

A. Yes, sir.

X Q. 18. When?

A. I have bought them as late as yesterday—not from him, but from his clerks.

X Q. 19. Did you ever buy nets from him like this net marked Exhibit C?

A. No, sir.

X Q. 20. Were you ever present when nets like this net marked Exhibit C were sold by him to Chas. Rogers & Co.?

A. No, sir.

X Q. 21. How, then, do you know that this net, Exhibit C, is one of Mr. Jennings' nets?

A. By the brand on the boxes, or trade-mark, and inside the net is another trade-mark, and I have seen them in Mr. Jennings' place, and I have spoke to Mr. Jennings about the net.

(Latter part of answer objected to as volunteered.)

X Q. 22. Please show me, on Exhibit C, the trade-mark which you say is inside the net.

A. I can't show it on this Exhibit C, for it is lost off; there is no other net in New York, that I have ever seen, marked "Duplex."

(Same objection to latter part of answer.)

X Q. 23. Have you seen nets like this Exhibit C in any other store or place except that of Chas. Rogers & Co. and Mr. Jennings'?

A. Not as I remember; other stores keep them, but I have never seen them.

X Q. 24. How do you know that other stores keep them?

A. Because he sends a full line of his nets to other firms, as well as to Chas. Rogers & Co.

(Objected to by defendant's counsel as hearsay.)

X Q. 25. How do you know that he sends them to other stores?

A. I have been told so by his clerks and by other parties.

(Same objection.)

41 X Q. 26. What brand or trade-mark is there on the boxes referred to in your answer to cross-question 21? Please hear that answer read before replying.

A. The words "Nottingham Lace Works," and a mark or figure which I am told represents the bobbin and carriage of a lace-machine.

X Q. 27. Does the firm of Chas. Rogers & Co. deal in any other lace-works from Nottingham, or purporting to be Nottingham lace-works?

A. We buy nets from other parties, but none go by the name of Nottingham excepting Jennings'.

X Q. 28. Please look at the net I now show you, and which is marked "Def't's ex. 1," and state whether such nets are kept or sold by Charles Rogers & Co.

A. I never saw the net before.

Redirect.

Re-d. Q. 29. When last did you see nets like this Exhibit C in Mr. Jennings' place?

A. I couldn't tell; I was in there and looked at his line of nets two or three days ago, but I did not look for that net particularly.

Re-d. Q. 30. Have you seen any such as the duplex net, Exhibit C, in his place during this year or during the year 1872?

A. I took a sample of that net over to Jennings' store two or three days ago, but I never at that time noticed any in his stock. I have often seen them in his place in 1872, but I could not tell the day or month.

Re-d. Q. 31. Can you state whether you saw any such in his place during the latter half of the year 1872?

A. I have seen them during nearly all the year 1872, but I couldn't tell whether it was the latter part or what part.

Re-d. Q. 32. Can you state whether or not you saw any such in his place during the year 1872, and subsequent to the first of April in that year?

A. No, sir; I can't tell what month I have seen them in; I have seen the nets there in 1872.

Re-d. Q. 33. Where in his place were such nets that you saw there in 1872, like Exhibit C?

A. On the sample-counter?

Re-d. Q. 34. State whether or not they were part of the regular stock on sale at his store.

(Objected to as incompetent and calling for an opinion.)

A. I could not tell anything about that; he sent us duplex nets in the year 1872.

(Latter part of answer objected to, as volunteered, by defendant's counsel.)

42 Re-d. Q. 35. State whether or not you were in the habit of going to Mr. Jennings' store during 1872, and whether often or seldom, and what took you there.

A. I went there after nets; I went there seldom in the year 1872; not very often; I went for Chas. Rogers & Co.

Re-d. Q. 36. You say in answer to cross-question 21, speaking about how you know that the net Exhibit C was one of Mr. Jennings' nets, "I have seen them in Mr. Jennings' place, and I have spoken to Mr. Jennings about the net." Relate the conversation you had with Mr. Jennings about the net, or conversations, if more than one, to which you refer in this answer, and give the time it occurred, as near as you can recollect.

(Objected to as immaterial.)

A. I am not positive of it being Mr. Jennings or Mr. Jennings' salesman. I told either one or the other that Mr. Dalton was around to our place and said that he had the patent of that net. I told him what Mr. Dalton said, and he said that Mr. Jennings would not do anything like that, and that that was made in Nottingham before; it was at the time Mr. Dalton came around and told us not to sell any—in the year 1872.

Re-d. Q. 37. Can't you state more definitely the time in the year 1872 when this conversation occurred—as whether it was summer, or autumn, or spring?

A. I think it was summer, or early part of summer.

Re-d. Q. 38. Where did this conversation take place?

A. In Mr. Roger's store.

Re-d. Q. 39. At the time of this conversation, were any of Mr. Jennings' duplex nets, like Exhibit C, present?

A. Yes, sir.

Re-d. Q. 40. Can you produce the brand or trade-mark that were on the boxes you speak of in your answer to cross-question 21?

(Objected to as immaterial.)

A. Yes, sir.

Re-d. Q. 41. Was the trade-mark that was inside the nets the same or a different one as that on the boxes?

(Same objection.)

A. Similar to it.

Re-d. Q. 42. Will you produce specimens of said trade-mark or trade-marks of Mr. Jennings at the adjourned day of this examination?

A. I can't get the one on the duplex, but I can get one of those
43 that are used on all his nets that have trade-marks; they are all alike, the same trade-mark for all his nets.

(A recess is taken for the purpose of giving the witness time to go to Rogers & Co.'s store to procure the trade-mark. On his return the witness proceeds to say:)

I can't get the ones that are used on all his boxes, because they are not all alike, as I found on going back to the store that his trade-marks are not all alike. I produce one that is used on the duplex, I think. I got it off another box of Jennings' nets.

(The trade-mark produced by witness is offered in evidence by counsel for complainant, and is marked "Complainant's ex. F, R. E. S., ex'r.")

Re-d. Q. 43. You have spoken of hair-nets of Mr. Jennings' like Exhibit C, which you took to his store two or three days ago. State what hair-nets they were, where you obtained them, why you took them to Mr. Jennings' store, who received them from you there, and what took place on that occasion.

(Objected to as implying what witness has not said. Complainant's counsel adds to the question as follows:)

State, also, how many hair-nets like Exhibit C you took over on that occasion.

A. They were Duplex and others; I got them out of Mr. Rogers' store; there was only two or three of a kind, and I took them back to have them exchanged for full dozens; Mr. Hendrickson, Mr. Jennings' salesman, received them from me; Mr. Hendrickson bought some elastic from me at the same time.

Re-d. Q. 44. Was Mr. Jennings present?

A. No, sir.

Re-cross:

Re-X Q. 45. Were you ever present when nets like Exhibit C were sold by Mr. Jennings to Charles Rogers & Co.?

A. No, sir.

Re-X Q. 46. Do you swear that you saw nets like Exhibit C in Mr. Jennings' place in Howard street?

A. Yes, sir, I can swear that I have seen this make of a net (pointing to Exhibit C) in Mr. Jennings' place in Howard street.

Re-X Q. 47. Are you sure they were not like this net, Exhibit E, without reference to the card on which the same is put?

A. They were not on any card; they were similar to this net, Exhibit E.

Re-X Q. 48. Will you swear that they were not like this net, Exhibit E?

A. No, sir.

44 Re-X Q. 49. If they had been like Exhibit E, and not like Exhibit C, would you have detected the difference on seeing them in Mr. Jennings' store?

A. Only by the board that they are on.

Re-X Q. 50. But they were not on a board—I mean those that you saw in Mr. Jennings' place—were they?

A. No, sir; I took them off the board.

Re-redirect.

Re-red. Q. 51. You say that you were not present at any sales of nets like Exhibit E by Mr. Jennings; state whether or not you know of any hair-nets resembling Exhibit C or Exhibit E being received at the store of Chas. Rogers & Co., during this year or last year, from Mr. Jennings.

A. I know that we have got a bill from Mr. Jennings of duplex hair-nets, January, 1872.

W. E. LARIGAN.

Subscribed and sworn to before me this 5th day of April, 1873.

R. E. STILWELL, *Examiner, &c.*

MONDAY, *April 7th*, 1873.

Present: Counsel as before.

Continuation of the cross-examination of A. FABER DU FAUR:

(The witness states he desires to have questions 12 and 13 read over to him, as he believes he did not properly understand the same; and after they are read, the witness proceeds to say:)

If it is meant by the question that the double strands should run in a continuous direction crossing each other, then I am of the opinion that this could not be done in a bobbin lace-machine.

X Q. 20. But what is your opinion as to the matter alluded to in your last explanation, if the threads change their direction at each crossing?

A. The threads do not then actually cross each other at right angles, although the fabric will have the general appearance of the threads crossing each other at right angles; if the question, then, refers to such fabrics as Exhibits E and C, I am of the opinion that they can be made on a bobbin lace-machine.

45 X Q. 21. The question is not whether such fabrics as Exhibits E and C can be made on a bobbin lace-machine, nor whether the threads cross each other at a right angle, but it is whether such threads, being in double strands, pass through each other at each crossing? Please answer this.

A. The threads in Exhibit E pass through each other; that is to say, the fine threads and the coarse threads so cross each other that one of the fine threads goes between the coarse threads and one of the coarse threads between the fine threads, with the twist at the crossing.

X Q. 22. Do you find in Exhibit E that both strands of the fine threads pass through the strands of the coarse threads, or vice versa?

A. I do not.

X Q. 23. Is it possible, in your opinion, to make on a bobbin lace-machine a fabric similar to Exhibits E and C, in which both strands of the fine threads pass through the strands of the coarse threads, or vice versa?

A. I don't think it could be done with the ordinary arrangement of a lace-machine, but I am not prepared to say that some attachment might not be made so as to render it possible.

X Q. 24. Please examine Exhibit C, and state in what kind of a machine the same, to your opinion, has been made.

(Counsel for complainant objects to the question as irrelevant, because it does not relate to any issue in the case.)

A. I suppose it has been made on a bobbin lace-machine.

X Q. 25. Do you find in complainant's patent, Exhibit A, any statement confining the inventor or public to any particular kind of machine for producing the net in question?

A. I do not.

X Q. 26. Does the description of the patent, Exhibit A, confine the use of the invention in question to any particular purpose?

A. As far as I understand, it is confined to ladies' hair-nets.

X Q. 27. Then, if the same net which is described in complainant's patent Exhibit A were used for tidies, veils, or other purposes other than hair-nets, would it, in your opinion, not have been described, specified, or claimed in said patent Exhibit A?

(Counsel for complainant objects to the question as irrelevant and immaterial, and as calling for a construction by the witness of the scope of the patent.)

A. I find neither tidies nor veils described or claimed in complainant's patent; whether the claim could cover the same, it would require a legal opinion, which is not in my province to give.

X Q. 28. Please look at the net marked "Defendant's Exhibit 2," and state whether or not you find therein the invention, or any part

46 thereof, which is described in complainant's patent, Exhibit A, and give your reasons for any opinion you may express.

A. I find in Exhibit 2 the spaces between the coarse pillars filled up by finer meshes. It appears to me that the pillars were necessarily coarser, so as to be able to produce the heavier corners for ornamenta-

tion. The fabric looks different from what is shown in complainant's patent; I do not find two vertical independent sets of meshes.

A. FABER DU FAUR.

Subscribed and sworn to before me this 7th day of April, 1873.

R. E. STILWELL,
Examiner, &c.

Adjourned to 1.30 p. m. on the 8th of April, 1873.

TUESDAY, *April 8th*, 1873.

Present: Counsel as before.

Adjourned to the 11th inst., at 1 p. m.

FRIDAY, *April 11th*, 1873.

Present: Counsel as before.

LEMUEL F. HOLMES, called and sworn as a witness on the part of complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Lemuel F. Holmes; 24 years of age; reside in Brooklyn, and am a salesman.

Q. 2. With whom are you a salesman?

A. Peake, Opdycke & Co., in New York City, in the general dry-goods business, at 427 Broadway.

Q. 3. How long have you been in their employment?

A. Over seven years.

Q. 4. Look at Exhibit C, and state whether or not the said firm have had in their stock hair-nets like such exhibit; and, if yea, from whom did said firm procure or purchase the same, and when?

(Objected as hearsay.)

A. We have had nets similar to this, and if my memory serves me right they were procured in May, 1872; they were consigned to us by A. G. Jennings, now of Howard street, New York, for sale.

47 Q. 5. What became of said nets?

(Same objection.)

A. Some of them were sold by us, and those not sold were sent back to him.

Q. 6. State whether or not your firm accounted to Mr. Jennings and paid him for those that were sold?

(Same objection.)

A. That is a branch of business I am not in; it is office business.

Q. 7. What is the custom of your house as to paying for consigned goods.

(Same objection.)

A. They are paid for after they are sold, and at such terms according to agreement.

Q. 8. Has your firm had similar nets from any other firms, and, if so, from whom?

(Objected to as immaterial.)

A. To my knowledge and belief we have had domestic nets only from Mr. Jennings and Mr. Dalton of late. We have had foreign nets, which we have imported; that is, if my memory serves me correctly.

Q. 9. How does the net, marked "Exhibit E," compare with such as your firm has had from Mr. Dalton, or with any of such nets, as to similarity or dissimilarity?

(Same objection, and because indefinite.)

A. It looks very similar.

Q. 10. State to what extent hair-nets like Exhibit E have been sold in this country, so far as your knowledge extends?

A. Well, at the time they were first introduced they seemed to be liked and sold better than any we had in our stock of a corresponding price.

(Counsel for defendant objects to this answer as not responsive and as volunteered.)

Cross-examined by Mr. Briesen:

X Q. 11. Are you personally acquainted with Mr. Jennings, the defendant in this case?

A. I am not, and don't know that I have ever seen him. He has a salesman who has consigned the nets to us.

(The latter part of answer objected to as volunteered.)

48 X Q. 12. Have you ever personally bought or taken nets from Mr. Jennings?

A. No, sir. Have you reference to Mr. Jennings personally or his salesman?

X Q. 13. To Mr. A. G. Jennings, personally.

A. Not to my knowledge and belief.

X Q. 14. Have you ever bought or sold nets similar to Exhibit E, which were imported from a foreign country?

A. No, sir.

LEMUEL F. HOLMES.

Subscribed and sworn to before me, this 11th April, 1873.

R. E. STILLWELL,
Examiner.

MONDAY, *April 14th*, 1873.

Present, counsel as before.

WILLIAM J. LAIDLAW, called and sworn as a witness on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Wm. J. Laidlaw; 25 years of age; reside at 52 High street, Brooklyn, and am a clerk with J. W. and K. Chisholm & Co., merchants, in Broadway, No. 447.

Q. 2. How long have you been with them as clerk?

A. About sixteen months.

Q. 3. Look at complainant's Exhibit C, and state whether or not said firm of Chisholm & Co. have bought goods of that description during the time you have been in their employment, and if yea, from whom, and state the date of any sales to said firm of such goods to which you may refer.

(Objected to as hearsay.)

A. They have bought them from A. G. Jennings on the second of April, 1872.

Q. 4. Can you produce any bill of the sale by said Jennings to said firm of such goods? If yea, will you produce the same?

A. I can and do.

(Complainant's counsel puts in evidence the bill produced by the witness, and the same is marked "Exhibit G, R. E. S., ex'r."

Defendant's counsel objects to the introduction of said bill in evidence as incompetent, unless it be shown that the same was prepared by or in the presence of witness.)

49 Q. 5. Where and from whom did you obtain the bill Exhibit G?

A. I got it from Jennings; at least the boy who fetched the nets to the store.

Q. 6. What nets do you refer to that he fetched to the store?

A. The net that is called "Duplex."

Q. 7. At what time did he fetch such nets?

A. He might have fetched in the nets to-day and sent in the bill to-morrow. The date of this bill is April 2, 1872.

Q. 8. Point out on said bill any entry or item therein, if any there be, which refers to goods similar to Exhibit C shown to you.

A. Second item: "Duplex," ½ gross silk nets, $33, $16.50.

Cross-examined by Mr. Briesen:

X Q. 9. What kind is the Berlin net referred to in said bill?

A. Another kind of a net.

X Q. 10. Can you describe what kind of a net it is?

A. No, sir; I cannot tell what kind of a net it is.

X Q. 11. Do you not remember what kind of a net it is?

A. I know it is a net different from the duplex.

X Q. 12. How do you know that the net, Exhibit C, is the one called "Duplex" on said bill?

A. I know from the paper shield.

X Q. 13. Would you be able to swear that the net, Exhibit C, is the one called "Duplex" if that paper shield was not on that card?

A. No, I would not.

X Q. 14. So you do not recognize the net, Exhibit C, as of the kind which Chisholm & Co. had in their possession from the construction of the net alone, do you?

A. I do not.

X Q. 15. Suppose the shield you see on the card of Exhibit C were applied under a net of quite different construction from the one now on it, would you be able to recognize the difference from memory alone?

(Objected to as indefinite and because no different net is shown to the witness.)

A. Yes, sir.

X Q. 16. Are you personally acquainted with Mr. A. G. Jennings?

A. No, sir.

X Q. 17. Have you ever been at his place of business?

A. No, sir.

X Q. 18. Where did you get this bill, Exhibit G, from?

A. I first got it with the net.

50 X Q. 19. Where did you keep it since?

A. After I had checked the bill, after having received the net, I passed the bill into the office.

X Q. 20. How did you check that bill?

A. With my initials.

X Q. 21. Have you ever had other nets similar in construction with the "Duplex" in your store besides the "Duplex?"

A. To the best of my memory, I think I have.

X Q. 22. Do you remember where they were obtained by the firm of Chisholm & Co.?

A. From Mr. J. Dalton, the complainant in this case.

X Q. 23. Were they also marked "Duplex?"

A. No, sir.

X Q. 24. How were they marked?

A. I forgot how they were marked.

Redirect.

Red. Q. 26. Point out your initials on the bill, Exhibit G.

A. They are here in pencil, right under the last item, "O" of "180."

Recross.

Recross Q. 26. Do you mean to swear that this pencil scrawl represents the letters "W. J. L.?"

A. I do.

W. L. LAIDLAW.

Subscribed and sworn to before me this 14th April, 1873.

R. E. STILLWELL,
Examiner, &c.

Complainant rests.

51 COMPLAINANT'S EXHIBITS.

Complainant's Exhibit A.—R. E. S., examiner, &c.

THE U. S. PATENT-OFFICE.

To all persons to whom these presents shall come, greeting:

This to certify that the annexed is a true copy from the records of this office of the letters-patent granted Joseph Dalton, dated March 5th, 1872, No. 124340, for "improvement in ladies' hair-nets."

In testimony whereof, I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-second day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[L. S.]

J. M. THACHER,
Acting Commissioner.

No. 124340.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas Joseph Dalton, of New York, New York, has presented to the Commissioner of Patents a petition praying for the grant of letters-patent for an alleged new and useful improvement in ladies' hair-nets, a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters-patent are to grant unto the said Joseph Dalton, his heirs or assigns, for the term of seventeen years from
52 the fifth day of March, one thousand eight hundred and seventy-two, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent-Office to be affixed, at the city of Washington, this fifth day of March, in the year of our Lord one thousand eight hundred

and seventy-two, and of the Independence of the United States of America the ninety-sixth.

[L. S.]

B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

124340. Patented

UNITED STATES PATENT-OFFICE.

Joseph Dalton, of New York, N. Y. Improvement in ladies' hair-nets.

Specification forming part of letters-patent No. 124340, dated March 5, 1872.

To all whom it may concern:

Be it known that I, Joseph Dalton, of the city, county, and State of New York, have invented a new and improved lady's hair-net; and I hereby declare the following to be a full, clear, and exact description thereof, which will enable those skilled in the art to make and use the same, reference being had to the accompanying drawing forming part of this specification, in which drawing—

Figure 1 represents a plan or top view of my net. Fig. 2 is an enlarged view of a few meshes, showing the manner in which the net is formed; and Figs. 3, 4, 5, and 6 are modifications.

Similar letters indicate corresponding parts.

This invention relates to a net composed of two or more sets of meshes, each formed from different-sized threads, they being combined in a manner too fully described hereafter to need preliminary description.

In the drawing, the letter A designates a hair-net, which is composed of meshes *a b*, formed from different-sized threads. The meshes *a* are formed of coarse threads, and they are of considerable width, so that a net formed of these meshes alone, when placed on the head, would permit the short hair to protrude through it, and it is therefore desirable to partially fill up these meshes by the secondary meshes *b*. These secondary meshes are, by preference, made of very fine silk threads, so that the same are invisible when the net is worn, and, at the same time, by these secondary meshes, the hairs are effectually held down. The meshes *b* (when an auxiliary set is used) are attached to the meshes *a* in the middle of their bars; and when two or more sets are introduced, they are placed equidistant, or nearly so; and the two sets of meshes—that is, the main set *a* and auxiliary set or sets *b*—are so formed and connected with each other that either set can be entirely broken away without destroying the other. If the fine meshes, or any of the same, are torn, therefore, each torn mesh can be cut out without destroying the main fabric.

The meshes *a*, as well as the meshes *b*, are, by preference, made of double strands, which pass through each other, as shown in Fig. 2, they being fabricated in a manner well known to lace manufacturers; but I do not confine myself to the precise method of forming the meshes. They may, in some cases, be composed of three or more strands, united by tying, in any manner, at the ties, and of varying qualities and color of thread.

The auxiliary meshes, when more than one set is used, may be arranged at acute angles to the main meshes, and may, of preference, be grouped together.

What I claim as new, and desire to secure by letters-patent is—

A head or hair net composed of a main set of meshes fabricated of coarse thread, combined with an auxiliary set or sets of meshes fabricated of fine threed, substantially as described.

J. DALTON.

Witnesses:
W. HAUFF,
E. F. KASTENHUBER.

Complainant's Exhibit B.

VAN SANTVOORD & HAUFF'S PATENT AGENCY,
41 PARK ROW, (TIMES BUILDING,)
New York City, May 8th, 1872.

To ABRAHAM G. JENNINGS, *Howard St., New York:*

SIR: We are instructed by Mr. Joseph Dalton, to whom letters-patent of the United States, No. 124340, were granted March 5, 1872, for an improvement in ladies' hair-nets, to notify and warn you to cease forthwith infringing said patent, and you are requested to give him an account of the number of hair-nets made or sold by you in infringement of said patent by the 13th day of May, instant, and to compensate him for the damages he has suffered therefrom.

54

If you disregard this notice suit will be brought against you.

Respectfully,

VAN SANTVOORD & HAUFF.

Served copy of above on salesman in charge of store May 8, 1872, a. m. Exhibit B, R. E. S., examiner, &c.

Complainant's Exhibit D.

Positively no goods taken back unless damaged, and all claims for deduction must be made within five days after receipt of goods.

CHAS. ROGERS. HENRY ROGERS.

[Rich fans, morocco bags, head-nets, porte-monnaies, fancy soaps, fine perfumery, combs, brushes, needles, pins, thread, tape, buttons, hosiery, &c.]
[Book, . Page, . Salesman, .]

NEW YORK, *Sept. 26th*, 1872.

M. Chas. Wahlers, bought of Charles Rogers & Co., importers and jobbers of fancy goods and perfumery, (near B'way,) No. 317 Canal st.:
1 doz. hair-nets, *a* 2.50 ..... $2 50

(Across face:) No discount.
(Endorsed:) C. Rogers & Co., bill of sale, (Jennings nets.)

Bought 1 doz. nets of Chas. Rogers & Co., Sept. 26, 1872, said to be made by Jennings.

CHAS. WAHLERS.

Complainant's Exhibit D, R. E. S., examiner, &c.

55 Circuit court of the U. S., southern district of New York.

JOSEPH DALTON
against
ABRAHAM G. JENNINGS.

Testimony on the part of the complainant in rebuttal for final hearing, under the 67th rule of the Supreme Court of the United States.

MONDAY, *June* 2, 1873.

Present, counsel as before for the respective parties.

MARY ANN BRABSON, a witness called on behalf of the complainant, having been duly sworn, deposes and says:

Q. 1. What is your name, age, and residence?

A. Mary Ann Brabson; age, 23 years; residence, 205 Frost street, Brooklyn, N. Y.

Q. 2. Were you ever in the employment of Joseph Dalton, here present? and, if so, state in what business, and during what time.

A. Yes; in manufacturing hair-nets. It was in the month of April, 1869, that I first went to work for him, up to the present time.

Q. 3. In what branch of that business were you employed in his factory?

56 A. In making hand-made nets; cutting and boarding machine-nets.

Q. 4. Do you know of any invention in ladies' hair-nets made by Mr. Dalton? and, if so, state what it was, and how you came to know about it, and the time of your first knowledge of it.

A. I have always understood that Mr. Dalton invented the Theodora net. It was in June or July of 1869 Mr. Dalton had some heavy cord-nets, and he wished me to tie in some fine thread, so as to make a net similar to the one he afterwards invented.

Q. 5. Describe the Theodora net you speak of.

A. It was a heavy cord net with fine threads woven in it, so as to have the appearance of two nets.

Q. 6. Look at the net, Exhibit E, and state how that compares with the Theodora net you have spoken of.

A. It is the same in appearance.

Q. 7. Under what name did Mr. Dalton first bring out or introduce this kind of hair-net?

A. Theodora.

Q. 8. Do you recollect under what other name, if any, Mr. Dalton put the same net into the market?

A. Visible-invisible, Dolly Varden, Horace, Jubilee—the Jubilee head-dress I believe it was called.

Q. 9. Did Mr. Dalton explain to you at the time you refer to, June or July, 1869, his object in wishing to have a fine thread placed in the nets as you have explained in your answer?

A. Yes, on purpose to have the mesh made smaller. Nets were being worn very heavy then, and the hair would come through the meshes and look rough.

Q. 10. By what circumstance, if any, are you able to fix June or July, 1869, as the time when Mr. Dalton explained the kind of net to you?

A. Because I had not been at work for him long.

Q. 11. Where was his factory at that time, June or July, 1869?

A. Corner of South Seventh street and Dunham Place, Williamsburgh, N. Y.

57 Q. 12. What was the condition of business in Mr. Dalton's factory at this time, June or July, 1869?

A. It was very busy.

Q. 13. Are you able to state the names of any men that worked there in 1869, between April and December of that year? if you are, please name them and state what particular branch of work they pursued in Mr. Dalton's factory.

A. Mr. Windley and Mr. Williamson had charge of two machines for making the lace for nets; and Thompson, he was working there getting the warps ready and general work around the shop.

Q. 14. Did you make any such nets by hand at the time Mr. Dalton first explained the invention to you as you have stated, in June or July, 1869?

A. No; I was too busy with other work.

Q. 15. Do you know whether or not Mr. Dalton, at that time, June or July, 1869, gave any directions to anybody to make such nets with fine thread between the coarse meshes by machinery?

(Objected to as hearsay.)

A. No; but I know Mr. Windley was experimenting on the lace-machines, but I didn't know what it was.

Q. 16. You have said Mr. Dalton, in June or July, 1869, wished you to place fine threads in the nets; state more particularly how the fine threads were to be arranged in the nets.

A. So as to divide the coarse mesh into quarters.

Q. 17. Look at the net I now show you, and state how that compares with the heavy-cord nets you have spoken of in your answer 4.

(Objected to as indefinite.)

A. The cord in those nets were heavier and the mesh larger.

(The net shown to witness is here offered in evidence by counsel for complainant, and marked "Complainant's exhibit Brabson.")

Q. 18. Is this net, Exhibit Brabson, one of Dalton's manufacture?

58 A. I believe it is.

Q. 19. Is it, in the size of the meshes and of the thread, what might be called an ordinary hair-net?

(Objected to as leading.)

A. Yes; of a good kind.

And in answer to cross-interrogatories by counsel for defendant, the witness says as follows:

Cross Q. 20. What work did you do in October, 1872?

A. We were making Theodora nets, I believe, then; I was cutting and boarding them. Well, I spoke of 1871; I don't know what I was doing in October, 1872.

Cross Q. 21. What were you doing in September, 1872?

A. I was working for Mr. Dalton, but I don't know exactly on what kind of goods.

Cross Q. 22. On what kind of goods were you working *on* in the month of February, 1873?

A. I wasn't working at all; I was home, sick.

Cross Q. 23. What were you doing in July, 1870?

A. I hardly know what I was doing then.

Cross Q. 24. When did you last speak with Mr. Dalton about what he calls his invention?

A. I don't know when it was.

Cross Q. 25. Was it this week?

A. I haven't seen Mr. Dalton this week until to-day.

Cross Q. 26. Are you still at work for Mr. Dalton?

A. I have not left his employ; still I have not been at work for the last two months.

Cross Q. 27. You say that you had always understood that Mr. Dalton had invented the Theodora net; from whom had you understood so?

A. From Mr. Dalton.

Cross Q. 28. When did you first see a Theodora net?

A. In the fall of 1871.

Cross Q. 29. What is the difference between the Visible-invisible net and the Theodora?

A. I don't know that there is any.

Cross Q. 30. Is there no difference, then, between the nets
59 you have mentioned—the Dolly-Varden, Horace, Jubilee, Visible-invisible, and Theodora?

A. Only in the quality of the silk.

Cross Q. 31. How long did Williamson work with Mr. Dalton?

A. I don't know. He was employed there before I went there, up to the summer of 1870, I believe he left.

Cross Q. 32. Mr. Windley is still in his employ, is he not?

A. I don't know.

Cross Q. 33. When did you last see Mr. Windley?

A. In January, in 1873.

Cross Q. 34. Were there no other men than Windley, Williamson, and Thompson in Mr. Dalton's employ in 1869?

A. I believe Mr. Colton was working for him part of the time.

Cross Q. 35. Any other man?

A. Not that I know of.

Cross Q. 36. Please look at the net marked "Defendant's exhibit 10," and state whether that is what you might call an ordinary net?

A. I should call it a small mesh net.

Cross Q. 37. What, then, do you understand by the term ordinary net?

A. I hardly know what I should call an ordinary net, they are so many.

Cross Q. 38. Well, is this net, Exhibit 10, not rather ordinary?

A. Nothing very extraordinary in it.

Cross Q. 39. Have you any objection in stating why you have not been in business for the last two months?

60 A. I was sick in February; I went to work in March, and brought on a relapse, and have not been able to work.

MARY ANN BRABSON.

Subscribed and sworn to before me this 2d day of June, 1873.

R. E. STILLWELL,
Examiner, &c.

Adjourned to Wednesday, June 4 1873, at 9.15 a. m.

NEW YORK, *Wednesday, June* 4, 1873.

Present, counsel for both parties.

JAMES NEWBOLD, a witness called and sworn on part of complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. James Newbold; 58 years old; residence, 466 Pearl street, New York City; occupation, lace-worker.

Q. 2. How long have you been a lace-worker?

A. More or less since I was eight years of age; I began first then.

Q. 3. How long have you been in this country?

A. Two years the 11th of this month.

Q. 4. Do you know Joseph Dalton, here present; and if so, how long have you known him?

A. I have known him two years; I did not know him before I came to this country.

Q. 5. Look at the hair-net, Exhibit E, and state whether or not you have any knowledge of machinery for making that kind of pattern of goods; and state where such machine was, in whose factory, and if you had anything to do therewith, state what your connection therewith was.

A. This kind of goods, and the machinery that made, it was Mr. Dalton's; I brought the machine over with me to this country, came with it, at least, and put it to work, and worked it for nearly a year for Mr. Dalton.

61 Q. 6. Where did that machine come from?

A. From Nottingham, England.

Q. 7. From whom there?

A. It came out of Mr. Brooksbank's shop.

Q. 8. On whose order was that machine sent from Nottingham, if you know, and for what purpose?

A. Well, I believe Mr. Brooksbank had the order and the sending of it away, for the purpose of making these nets, Exhibit E.

Q. 9. Do you know Abraham G. Jennings, lace-manufacturer, of this city and Williamsburgh, or Brooklyn?

A. Yes; I have worked for him.

Q. 10. When did you work for him, and for how long?

A. I think it was somewhere about May last year when I commenced working for him, and I left him about three months ago.

Q. 11. Do you know of any efforts on the part of Mr. Jennings, since you have been in this country, to make nets or goods of the description of Exhibit E; and, if you do, please state what you know on that subject?

(Objected to as not rebutting testimony.)

A. Well, I don't know whether he tried to make them; there were several tried to make them, and I believe the only man that did make them was Henry Soar.

Q. 12. State whether or not any one tried to get you to make this kind of goods like Exhibit E while you were in the employment of Mr. Dalton; and, if so, who?

A. A person by the name of George Goody, or Good; he came twice or three times to our house in West Broadway, and said he would give me $25 if I would give him the plan or draft of making them.

Q. 13. Where was George Goody employed?

A. At A. G. Jennings'; he is employed there now; he came and he told me that Mr. Jennings could keep his machine going if he could get on with this kind of goods; he said he would give $25 out of his own pocket; I refused.

Q. 14. When was this?

62 A. It was some time in the winter, when the snow was on the ground—the last winter but one; I said to him if Mr. Jennings wanted to go on with it, and would give me a better job than what I had I would come, but I would not do it for no person while I was working for the same party.

Q. 15. Who were you working for at that time?

A. Mr. Dalton.

(Counsel for complainant offers in evidence a certificate of the Acting Commissioner of Patents, J. M. Thacker, dated May 29, 1873, containing "a part of the model from the records of this office in the matter of the letters-patent granted Joseph Dalton, dated March 5, 1872, No. 124340, for hair-net," and the same is marked Complainant's exhibit K, R. E. S., ex'r.)

Q. 16. Look at the certificate and model annexed thereto, marked Exhibit K, and state in what manner the meshes of the larger and finer threads in said model are engaged with each other?

A. The fine ones are engaged by themselves, and the coarse ones by themselves.

Q. 17. Are the fine and coarse meshes interlocked or connected to each other; and, if so, how?

A. The fine mesh is catched at two different points, to keep it from separating from the thicker ones; you might say that the fine meshes are made underneath the thick ones, and the thick ones over the fine; there are two nets; they are merely hanked or attached to keep them from separating.

Q. 18. Explain how they are hanked or attached together?

A. The fine warp-thread is twisted around the coarse thread of the bobbin.

Q. 19. Is there also a coarse warp-thread, and if there is, how is that arranged in relation to the fine warp-thread of which you say "it is twisted around the coarse thread of the bobbin?"

A. The coarse thread of the warp twists around the fine thread of the bobbin the same as the other.

63 Q. 20. Then do you mean to be understood that the different threads which compose the fine mesh pass between and around the different threads composing the coarse mesh, or how do they pass each other?

A. The fine passes underneath the coarse warp and laps around the coarse bobbin-thread; the other, that is the thick threads, are just the same, only one is made during the back motion and the other during the front.

Q. 21. Look at the paper marked Exhibit 9, and state if you recollect having seen that before; and, if so, when first?

A. Well, I don't know when I did see that; I think Mr. Dalton showed it to me; I fancy you (Mr. Van Santvoord) or Mr. Dalton showed me this with this design on, but I don't recollect.

Q. 22. If I or Mr. Dalton showed it to you, when was it?

A. If you showed it to me, it was when you sent for me to come here to your office; it's a week or two ago.

Q. 23. Look at the three drafts now shown to you and state what they are?

A. The large ones are the drafts that made that net, like Exhibit K and Exhibit E of Mr. Dalton; in England it was made for 32 motions, and we altered it to 24 here.

(Counsel for complainant offers in evidence the drafts shown to witness, and they are marked Exhibits L, M, N, R. E. S., ex'r.)

Q. 24. Do you know who made the drafts L, M, N, and for whom were they made?

A. I think his name is Wm. Brooksbank, of Nottingham, England, and he made them for Mr. Dalton.

Q. 25. Please examine the draft, Exhibit 9, and state whether or not that is a proper draft for making goods like the nets Exhibit C?

A. I would have to examine that first, because the draft is not like the drafts, and the net is not like Dalton's net.

Q. 26. How does the net, Exhibit C, differ from Mr. Dalton's net?

A. That I can't say without I examine it. In breaking the fine thread in Exhibit C the thick and all goes, and in Mr. Dalton's the fine will go and leave the thick without disturbing them.

64 Q. 27. From your knowledge of lace-making or net-making, can you state whether this draft, Exhibit 9, is perfect enough to produce by means thereof a net like Exhibit C in Exhibit K?

(Objected to as already answered.)

A. It produces a net, and good net, although it is not the same as Mr. Dalton's; it is the same in appearance, but not in making it.

Q. 28. Can a lace-maker produce a net on a warp-machine by following the draft Exhibit 9?

A. It must be a man that perfectly understands it to imitate it, but he cannot make the same as this Exhibit 9 on a warp-machine.

Q. 29. Do you know George Osborne, a lace-maker, now or lately working for Mr. Jennings?

A. Yes.

Q. 30. Did he work at Mr. Jennings' factory while you worked there?

A. Yes, sir.

Q. 31. Judging from your knowledge of his skill or experience as a lace-maker, is he competent to produce a net on a warp-machine in appearance like the net Exhibit K, by following the draft Exhibit 9?

(Objected to as incompetent and as calculated to mislead.)

A. That I cannot say, because I don't know what his abilities are. I never saw him at work or doing anything, as he was at one place and I was at the other; he might make one to represent it, but not the same as the net K, on a warp-machine.

Q. 32. When you went to work for Mr. Jennings, was Mr. Jennings making hair-nets which combined coarse and fine meshes?

A. Yes, on one machine, a Lever's lace-machine.

Q. 33. Was the net Jennings was then making the same as Exhibit C?

A. Yes.

Cross-examined:

Cross Q. 34. Is the net, Exhibit C, made on a Leaver's lace-machine?

A. Yes.

65 Cross Q. 35. Does the draft, Exhibit 9, represent the course of the threads as they cross each other on a Leaver's lace-machine to produce the net Exhibit C?

A. That I cannot say unless I run it through.

Cross Q. 36. Have you any facilities for making the experiment, so that you can answer the last question on the day to which this examination shall be adjourned?

A. I believe I could, provided I had the draft and a piece of net.

(Counsel for defendant hands witness a copy of tracing, Exhibit 9, and a net from the package, Exhibit C, and requests him to experiment, so that he may be able to answer the cross-q. 35.)

Adjourned to June 6, 11 a. m.

NEW YORK, *June 6th*, 1873.

Present, counsel for both parties.

The cross-examination of James Newbold, continued:

Cross Q. 37. Have you found it convenient to make the experiments which you were requested to make at the close of the last examination?

A. Yes.

Cross Q. Do you find that the draft, Exhibit 9, of which you had a copy, properly represents and indicates the course of the threads for producing on a Leaver's lace-machine a fabric like or similar to Exhibit C?

A. Well, in the first place I don't say it was made from that draft, but that draft will produce the same effect, to the best of my knowledge.

Cross Q. 39. Will you please explain whether, in your opinion, a Leaver's lace-machine is a warp-machine?

A. Certainly not. The reason is this, it is a different principle of machinery; one, the Leaver's lace-machine, is with bobbins and carriages, and the other, the warp lace-machine, with sinkers and needles. On the warp-machine the fabrication is looped, and on the Leaver's machine it is twisted.

66 Cross Q. 40. Then of course the draft Exhibit 9, as it is intended for a Leaver's lace-machine, will be of no use in a warp-machine, will it?

A. No; not to my knowledge.

Cross Q. 41. And the drafts Exhibits L, M, and N, being intended for use on a warp-machine, would furnish no aid to an operation on a Leaver's machine, will they?

(Objected to because the question assumes that the exhibits named are for warp-machines.)

A. Well, but those are made for the Leaver's machine, and they would not bring the same out on a warp-machine.

Cross Q. 42. What kind of machine was the one you brought with you from England for Mr. Dalton?

A. A Leaver's machine.

Cross Q. 43. On what machine is Dalton's net, Exhibit E, made?

A. On a Leaver's machine.

Cross Q. 44. And Jenning's net, Exhibit C?

A. A Leaver's, also.

Cross Q. 45. And the model, Exhibit K?

A. On a Leaver's machine.

Cross Q. 46. You say, in answer to Q. 32, that when you went to work for Mr. Jennings he was making nets on a Leaver's machine, which combined coarse and fine threads; were these nets similar to Exhibit C?

A. Yes; they resembled it, and I expect they are the same.

Cross Q. 47. Did you ever ascertain why Mr. Good, or Goody, should have wanted you to explain for Mr. Jennings' benefit the process of making nets having coarse and fine threads, if such process was already known to Mr. Jennings and used by him before you came?

(Objected to because it is calculated to mislead the witness as to times and dates.)

A. Because at that time Mr. Jennings was not making that net. It was some time afterwards before he got on making that.

Cross Q. 48. How do you know that at that time he was not making that?

67 A. Because Goody told me himself; I have no other proof. I was not in the shop to see.

Cross Q. 49. Do you know where this person Goody, or Good, is now to be found?

A. In Jersey City, Grand street.

Cross Q. 50. Is he at work at Jersey City; and, if so, with whom?

A. He lives there, and works for Mr. Jennings when he has work for him to do.

Cross Q. 51. Do you know of any other kinds of lace-machine besides the Leaver's and warp?

A. Yes; there is the pusher-machine, circular-machine, and traverse warp-machine. That is all.

Cross Q. 52. Are you acquainted with the operation of all these machines?

A. Yes, sir.

Cross Q. 53. Upon examining Dalton's net, Exhibit E, and Jennings' net, Exhibit C, do you find that the fine meshes or threads are composed of double strands, and the coarse also double?

A. The coarse in Mr. Jennings' is one warp thread, and the rest is all fine threads, both bobbin and warp.

Cross Q. 54. You have misunderstood my question. Is the coarse thread of Jennings' net composed of one strand only, or of two?

A. I believe there are two threads; there is two twisted together.

Cross Q. 55. Is the fine thread of Jennings' net also composed of two strands?

A. I think it is only one, by the looks of it.

Cross Q. 56. Please look carefully at the portions of the net Exhibit C, where the fine threads cross each other, and state whether you do not find, upon such examination, that there are two fine strands or plies for each thread.

A. There is two threads twisting together, and there is also two more twisting together and cross each other in the centre to make the tie; it forms a composition of 4 threads altogether to make the tie.

68 Cross Q. 57. How about Dalton's net, Exhibit E; has that also two strands in each fine thread and two in each coarse thread?

A. Yes, that is the same; there are two threads to the pillar.

Cross Q. 58. Do you consider it possible on a lace-machine to so make a fabric resembling these nets that at the crossing of two pillars the two threads of one pillar both pass through or between the two threads of the other pillar?

(Objected to as immaterial, and because the q. is not within the scope of cross-examination.)

A. There is one thread, that is the warp-thread, you can take through, but you cannot take the bobbins that way; that is only to a certain distance that you can take that warp-thread through and back again, according to the arrangement of the machine.

Cross Q. 59. When that person, Goody, came to you and offered you money for the draft of Dalton's net, did he say that he was sent to you by Mr. Jennings?

A. No; he told me that Mr. Jennings said if he could get on with that net he could run his machine—the one Goody worked on. Goody was idle at that time. He said Mr. Jennings told him if he could go on with that net he would find him employment.

Cross Q. 60. So Goody offered you $25 out of his own pocket to be able to find employment with Mr. Jennings; was that it?

A. Well, it comes to the same purpose, but those were not the words he used. When he came he offered me $25 to give him the plan to put his machine on with it, as he would have plenty of work then to go on.

Cross Q. 61. Did Goody at that time tell you that one of Jennings' machines was then already producing that kind of net?

A. No, sir; he said they were trying, but could not get it on.

Cross Q. 62. Did you bring the drafts Exhibits L, M, N with you from England?

69 A. No, sir.

Cross Q. 63. When did you first see them?

A. I saw them in Mr. Dalton's office.

Cross Q. 64. Who told you that Mr. Brooksbank had made them for Dalton?

A. Because I was there, and helped to put it on the machine.

Cross Q. 65. That does not explain who you got the information from that Mr. Brooksbank made the draft. Who told you that he made the draft?

A. I saw him with it in his hand. The first time we tried the bars were not placed right, and then with our opinion he went and made it right.

Cross Q. 66. Where was that?

A. That was in England.

Cross Q. 67. But you have just now sworn that you first saw these drafts in Dalton's office. Was Mr. Dalton's office in England at the time?

A. No, in America; and when I saw them in Williams' hands then I did not see what they were, because no designer will let you see the draft. I saw them in his hands, but did not see to know what they was. He had the face of them towards himself.

Cross Q. 68. If you did not see the face of these drafts while in England, how came you to swear that they are the same you saw in Wm. B.'s hand?

A. Because we made the net from them, and when I came here the draft would make the same.

Cross Q. 69. Well, might not Mr. Dalton have made these here?

(Objected to because it asks for an opinion.)

A. No, sir.

Cross Q. 70. What reason have you for saying that Mr. Dalton did not make these drafts?

A. Because he had not sufficient knowledge to make them at that time. That is my belief.

Cross Q. 71. Did you not find that Mr. Dalton was fully acquainted with lace-machines and their operation when you came here?

70 A. To a certain extent.

Cross Q. 72. To such an extent as to give instructions how to set the various parts of a machine for making a net like exhibit?

(Objected to as immaterial and irrelevant, and not cross-examination.)

A. He could give instructions as to what he wanted made. If he had been capable of doing this work he would not have found it necessary to send for me.

Cross Q. 73. Did you know a person by the name of Windley in Mr. Dalton's employ while you were there?

A. He was not there while I was there. I knew him. He was gone before I came.

Cross Q. 74. In what month of 1871 did you come to the United States?

A. I landed here I think it was the 11th of June.

Cross Q. 75. Was the net of which Exhibit K is a part made by you for Mr. Dalton?

A. Yes.

Cross Q. 76. Did you, when commencing work for Mr. Dalton, find that before your arrival he had been manufacturing hair-nets with thick and thin threads?

A. No, sir.

Cross Q. 77. How long was Mr. Brooksbanks experimenting before he

succeeded in so fitting the machine that it would make a net like Exhibit E?

A. The machine was an old machine, and then it had to go through repairs; but when the machine was ready it took about a couple of days for Mr. Brooksbanks to make the sample of the net.

Cross Q. 78. Do you mean two days by a couple?

A. Yes, sir.

And in answer to redirect examination the witness says:

R. D. Q. 79. What was the color of the sample that was made at Nottingham by Mr. Brooksbanks?

A. It was made in cotton unbleached.

R. D. Q. 80. Do you know what became of that sample?

71 A. It was sent to Mr. Dalton.

R. D. Q. 81. How large a sample was made?

A. Well, it was but a small piece; not very large. I can't say exactly.

R. D. Q. 82. Give the dimensions, as near as you can, comparing it with the card on which Exhibit E is sketched.

A. It might be from four to six inches each way; I can't tell exactly.

R. D. Q. 83. How was the work or sample you have spoken of regarded by those who saw it at Nottingham, so far as you know?

(Objected to as incompetent and immaterial, and not redirect examination.)

A. Well, the sample—there were but three or four of us that saw it. It was not so good as the nets that are made by Mr. Dalton. Of course, he did not pay that attention to it; it was merely to get the mesh, and as long as we got that it was sufficient.

R. D. 84. Was there anything peculiar in the mesh? If so, what?

(Same objection.)

A. It was not weighted properly, regulated properly.

R. D. 85. You say Mr. Brooksbank did not expose the draft of net. Why did he not?

(Same objection, and because it does not appear from the previous deposition that Mr. Brooksbank was in the habit of stating the reasons for his doings to the witness.)

A. I don't know.

R. D. 86. You say, in answer to cross-q. 64, that you "were there and helped to put it on the machine," speaking of the drafts L, M, N; state whether or not you had previously made such work for hair-nets, or known of any such made by others.

(Same objection as to R. D. 83.)

A. No; none of that kind.

And in answer to recross the witness deposes and says as follows:

72 Recross Q. 87. State whether or not you had previously made on lace-machines fabrics having thick and thin threads similar to the net Exhibit E.

A. That is, in all classes of fancy work we use thick and thin threads. The ground is fine, and the thick is embroidery-work to go around the borders of the flowers, or any sprigs or flowers—anything we run around to finish them off.

Recross Q. 88. Have you never seen lace fabrics with fine ground and with diamond-shaped patterns of heavier thread on such fine ground, previous to the aforementioned experiments in Nottingham?

A. Oh, yes, plenty; we see all the laces that way.

Recross Q. 89. Is not the net Exhibit E made with a fine ground and with diamond-shaped patterns of heavier thread on such ground?

A. Well, that pattern is made. There are two separate nets there, and just attached together to keep them from breaking apart—from going asunder. It is not the same net at all.

Recross Q. 90. But the net Exhibit C is not composed of two different nets, is it?

No, sir.

Recross Q. 91. Then the net Exhibit C, Jennings' net, having diamond-shaped pattern on the fine ground, is of the same class of which you say, in answer to recross-q. 88, that you have seen plenty, is it not?

(Objected to because the Jennings', Exhibit C, is not correctly described in the question, when it is described as being the same work of which the witness spoke in answer to recross-q. 88, and therefore the question is misleading.)

A. No, it is not. I will tell you for why. In the kind of fancy lace it is all composed of meshes, small and large, to make the ground-lace and to put the flowers in; the thick thread is merely put in, run around the flowers to distinguish one from the other.

Recross Q. 92. Have you never seen lace having thick threads and thin threads, but no flowers?

(Objected to as immaterial.)

73 A. Yes; in regard to hair-nets and those things, any common article.

Recross Q. 93. When, about, did you first see a hair-net or other common article having thick and thin threads made on a lace-machine?

A. Not till I came to this cou'try, for hair-nets.

Recross Q. 94. But when first for other things than hair-nets?

(Objected to as immaterial.)

A. Such as mosquito-nets; I have made mosquito-nets over 14 years ago in Paris, having different kinds of threads. We made two warps in Paris for New York, to cover ladies' beds.

Recross Q. 95. When did you make these two warps for New York?

(Objected to as immaterial.)

A. About 14 years ago.

Recross Q. 96. If you make a warp or a fabric on a lace mæsh, does it make any difference to the maker what purpose the warp is to be used for?

(Objected to as incompetent.)

A. Of course not, as long as he gets paid for his labor.

Recross Q. 97. How large, about, is a warp as usually made in a lace-machine?

A. Usually the machines are from 60 to 160 inches wide; the length is hardly ever less than 100 yards.

Recross Q. 98. Do you never produce single hair-nets on a lace-machine?

A. No.

Recross 99. And if you wish to make from a warp that is produced on a lace-machine a hair-net, mosquito-net, or other thing, you have to cut from the warp the piece of requisite size, have you not?

A. No; if you are going to change from one to another, you must take all out and start it afresh, according to what you want to make, because it is a different division of things altogether.

74 Recross Q. 100. You have misunderstood me; I ask you if you wish to obtain from a finished warp which has already been detached from the machine a mosquito-net, a hair-net, or a piece for any

other purpose, it is necessary to cut from the warp or finished fabric a piece of the requisite size, is it not?

A. You cut out the pieces as you want them, just as you cut up a piece of linen.

And in answer to redirect examination:

R. D. Q. 101. Could the mosquito-nets you have just spoken of be cut up into hair-nets?

(Objected to as calling for an opinion.)

A. No; they would be queer-looking nets.

R. D. Q. 102. Were the mosquito-nets you have spoken of, which you made in Paris, as you have stated, of the same construction as the nets Exhibit E or Exhibit C?

A. Oh, no, nothing of the kind.

JAMES NEWBOLD.

Subscribed and sworn to before me this 6th day of June, 1873.

R. E. STILWELL,
Examiner, &c.

JOHN WINDLEY, a witness called and sworn on behalf of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. John Windley; age, 38; residence, No. 30 Rush street, Williamsburgh. My shop is corner of South 11th street and 1st street, Brooklyn, E. D.; my occupation is lace-making.

Q. 2. Do you know Joseph Dalton, here present; and if so, how long have you known him?

A. Yes, I know him; I have known him for pretty near 8 years, I guess.

Q. 3. Did you ever work for him in this country; and if so, during what time?

75 A. Yes; I worked for him from the latter end of September, 1868, to the latter end of March, 1870.

Q. 4. Do you know Henry Williamson?

A. Yes, sir.

Q. 5. State if said Williamson worked for Mr. Dalton during the same time you did, or any part of that time.

A. Yes; he worked for him when I first commenced for Mr. Dalton.

Q. 6. Did Mr. Dalton, while you so worked for him, explain to you any new invention he had made in hair-nets? and, if so, state what he said and what he explained to you, as near as you can recollect, stating also the time and place where the same occurred.

A. Yes; he asked both me and Mr. Willamson if we couldn't make him a mesh like the one he described to us, and as an illustration of what he wanted *making*, he told us he wanted a fine mesh and a thick one all in one fabric, which was different from what had been made before. That was either, I think, in the latter part of June or the early part of July, 1869—I won't be certain which—in Mr. Dalton's shop.

Q. 7. Where was Mr. Dalton's shop at that time?

A. On the corner of Dunham Place and Broadway, Williamsburgh.

Adjourned to Saturday, June 7th, 1873, at 10 a. m.

NEW YORK, *Saturday, June 7th*, 1873.

The examination of JOHN WINDLEY resumed:

Q. 8. Did you and Williamson make what Mr. Dalton asked you to make for him regarding his invention, or did you or either of you make any attempts so to do? and, if yea, please relate what was done.

A. Yes; we tried to make what he described to us; we spent half a day in trying to make it; we did not know at the time that it would be the exact article that he wanted. Mr. Williamson bought a piece
76 of a tidy in Broadway; he bought the whole tidy, and we divided it between us; I paid half of it and he paid half of it. We thought if we could make something to imitate that style of goods it would answer Mr. Dalton's purpose. Me and Mr. Williamson spent half a day in trying to make it. We found we could not succeed, as the machine we was trying it on was not capable of making it.

Q. 9. Did you try it on one machine?

A. On one machine, a Leaver's lace-machine.

Q. 10. Who was accustomed to work on the machine on which you and Williamson tried to make the net?

A. Mr. Williamson.

Q. 11. Recall to your recollection and relate as near as you can what Mr. Dalton said to you when he first spoke to you about his invention.

A. Well, at the time I don't recollect that he said anything about an invention. He simply said that he had an idea in his head that if we could succeed in making this article that he wished us to make, it would be a thing that would sell well in the market and keep us constantly at work.

Q. 12. State how he described the article he wanted made. Give his words also as near as you can recollect.

A. At that time I was engaged in making a very heavy class of goods, hair-nets, and he said he noticed these hair-nets on ladies' heads, and the hair protruded through the large mesh; and he said if he could make a small mesh inside of the large one, he thought he could get plenty of orders for them.

Q. 13. Was this conversation which you have related in your last answer between Mr. Dalton and yourself alone? and if any other person was present at it, state who was so present.

A. At that time it was between me and Mr. Dalton alone.

Q. 14. Did he converse with you afterwards about the same matter; and, if so, how long afterwards? and state what occurred, if anything.

77 A. After the conversation that I had had with him, I found that he had been holding a similar conversation with Mr. Williamson.

(Answer objected to by counsel for defendant as not responsive to the question, volunteer, and hearsay.)

Q. 15. How do you know he had been holding a similar conversation with Williamson?

A. Because Mr. Williamson told me.

Q. 16. What did Mr. Williamson tell you?

A. He told me Mr. Dalton had been speaking to him about making exactly the same thing.

Q. 17. When did he tell you this?

A. The same day Mr. Dalton had had the conversation with me; well, I believe, as near as I can remember, it would be pretty near the closing time, somewhere near 5 or 6 o'clock. It was somewhere about the latter end of June or the first part of July, 1869; I can't exactly remember the date within a few days or a week.

Q. 18. How soon after this conversation was it that you and Williamson tried to make these goods on the lace-machine?

A. I believe it was within one or two days, I couldn't say which. Mr.

Williamson's warp was pretty nearly off at the time, and we agreed that as soon as he worked his warp off to try it on his machine.

Q. 19. Did Mr. Williamson and yourself make this trial at your own expense, or at the expense of some one else?

(Objected to as leading.)

A. We made it at the expense of Mr. Dalton.

Q. 20. Did you receive any compensation for the time you spent in making this trial; and, if so, from whom, and how much?

A. I received one dollar and a half for the half day spent, and I received it from Mr. Dalton.

Q. 21. Who did you work for after you left Mr. Dalton in the latter end of March, 1870, from then down to the present time?

78 A. I engaged to go to work for Mr. A. P. Backmann before I left Mr. Dalton. I worked for him till the latter end of the year 1870; then I started in business on my own account, or rather I and Mr. Williamson went into partnership. I have carried on business alone for about fourteen or fifteen months past.

Adjourned to Monday, June 9, 1873, at 10½ a. m.

NEW YORK, *June* 9, 1873.

Present: Counsel for both parties.

The further examination of JOHN WINDLEY resumed:

Q. 22. Can you produce a sample of the heavy hair-net you were making at the time Mr. Dalton described his hair-net to you; if so, will you produce the same?

A. Yes, sir; this is the one.

(Counsel for complainant opened the hair-net produced by the witness in evidence, and it is marked "Complainant's Exhibit O—R. E. S., examiner.")

Q. 23. How long have you worked at the services of making lace, in connection with lace-machines?

A. With the exception of about two years and a half, since I have been in this country. I have been at it for about 22 years, and I have worked among them as a boy some years previous to that.

Q. 24. Where have you so worked at this business?

A. In Nottingham, England; for A. P. Backmann, No. 103 Franklin street, New York City; for Mr. Dalton, and others, and myself in Brooklyn.

Q. 25. Since when have you been in the United States?

A. Since the 6th of February, 1864.

Q. 26. State whether or not you ever knew any hair-net such as Mr. Dalton described to you in June or July, 1869, previous to his description thereof to you?

(Objected to as leading.)

A. To the best of my knowledge there was not.

79 Q. 27. Look at the certified part of the hair-net model marked "Exhibit K," and state how that compares with what Mr. Dalton described to you, as you have stated, in June or July, 1869.

A. To the best of my knowledge that is the very identical thing he spoke to us about, with this exception—it was made a little different from what we were going to attempt to make it.

Q. 28. To whom do you refer by the word "we" in your last answer?

A. Myself and Mr. Williamson.

Q. 29. Have you worked upon both warp-machines and Leaver's lace-machines?

A. My experience has been chiefly confined to the Leaver's lace-machine.

Q. 30. State what knowledge or experience you have of operating warp-machines for making lace.

A. I haven't any knowledge or experience at all in working these.

Q. 31. Please examine the certified model of net marked "Exhibit K," and explain how the coarse and fine meshes are connected with each other.

A. The fine mesh, or rather one thread of the fine mesh, is caused to loop between the two thick threads, then goes back again to its original position and works as before until such times as it is necessary to put the tie on; the tie forms the diamond; one of the thick threads works just the same way as the fine one; the other fine thread is the bobbin-thread, which never traverses at all only when drawn over with the thread which connects with it, that is twisting with it; the other coarse thread is also a bobbin-thread, and works like the fine bobbin-thread.

Q. 32. Then the coarse mesh is composed of the two coarse threads you have spoken of, and the fine mesh is composed of the two fine threads; is that what you mean?

A. Yes.

80 Q. 33. Do you recollect whether or not Mr. Williamson, during the period in which he and yourself were in the employment of Mr. Dalton, worked constantly or otherwise?

(Objected to as leading.)

A. Well, sometimes he would be off for half a day, or a day sometimes.

Q. 34. Can you state whether or not such loss of time on his part was occasioned by want of work in Mr. Dalton's factory?

(Same objection, and as hearsay.)

A. Sometimes it was occasioned on his own account, sometimes by the boys not winding the bobbins to have them ready to put in the machine.

Q. 35. Please examine defendant's exhibit 2, and state what kind or description of work that is.

A. To the best of my knowledge that is a warp-net made on a warp-machine.

Q. 36. Did you ever know of any hair-nets in market like Exhibit 2; and, if so, when first?

(Objected to as leading.)

A. I never saw any like that.

Q. 37. Do you know who made Exhibit 2? and if so, please state what you know on that subject.

A. Thomas Horton and Elijah West are the parties—they made a similar pattern to that; I don't know whether this is the exact net they made. That was made in Steuben street, Jersey City; I believe it is between 6 and 7 years ago, as near as I can remember.

Q. 38. What was the article of goods they then made used for?

(Objected to as indefinite and immaterial.)

A. They were intended for ladies' vails or falls.

Q. 39. Was that work—I mean the description of lace of which Exhibit 2 is composed—a new kind or description when they made the same, 6 or 7 years ago?

81 (Objected to as immaterial.)

A. No, sir; it has been made in Nottingham many years previous.

Q. 40. Do you know who put up Exhibit 2 in the form or size shown in its present condition?

A. I do not.

Compare the work on fabric of Exhibit 2 with the work on fabric Exhibit K, and state how you find them to be with respect to similarity or dis'imilarity to or from each other?

A. They are a different class of goods entirely, both of them, to each other.

Q. 42. Look at defendant's exhibit 11, and state what that fabric is and how made, if you know.

A. It is a mosquito-netting made upon a weaving-loom.

Q. 43. Look at defendant's exhibits 7 and 8, and state, if you know, whose goods they are—whose manufacture.

A. I do not know whose manufacture they are.

Q. 44. Look at defendant's exhibit 12, and state what that is, if you know, and how constructed.

A. That is a piece of small tidy made by hand.

Q. 45. State what experience, if any, you have had in the manufacture of ladies' hair-nets in this country.

(Objected to as indefinite.)

A. I think I have had considerable experience in manufacturing hair-nets in this country. Well, as regards making the common kind of hair-nets, it does not require much experience, providing a man is a practical hand in the machine.

Q. 46. Is the manufacture of hair-nets in this country an old manufacture or otherwise, so far as your knowledge extends?

A. My answer to that would be objected to as immaterial. They have been manufactured in this country about nine years.

Q. 47. State what your connection has been in this country with their manufacture?

82 A. About nine years ago Mr. A. B. Bachman came on to Philadelphia, Penn., and bought a Leaver's lace-machine. He then had one warp-machine making hair-nets. He asked me if I could make a similar class of goods—that is, weaving hair-nets—upon the machine he had just bought. I told him I could. He engaged me right away to work the machine, take it to pieces, case it up, and move it off to New York.

Q. 48. Look again at defendant's exhibits 11 and 12, and state from your knowledge and experience in respect to ladies' hair-nets how such fabrics as said exhibits 11 and 12 would answer as ladies' hair-nets.

(Objected to as calling for an opinion.)

A. I don't think No. 11 would answer at all. I don't think anybody would attempt to use it as a hair-net. It is possible that No. 12 might be used as a hair-net, but not in cotton; it would have to be in silk, and then it would come very expensive.

And in answer to cross-interrogatories the witness says as follows:

Cross Q. 49. Is Exhibit 12, as far as you remember, part of the tidy which Williamson bought, and of which he gave you half?

A. Yes, sir; I believe that is part of it.

Adjourned to Wednesday, June 11, 1873, at 10 a. m.

NEW YORK, *Wednesday, June* 11, 1873, *at* 10 *o'clock a. m.*

Present: Counsel for both parties.

The cross-examination of JOHN WINDLAY resumed:

Cross Q. 50. What makes you think it was in June or July, 1869, when Mr. Dalton first spoke to you of the net he wanted made?

A. Because I was making a heavy class of goods at the time,
83 and I had only got the second warp on the machine of that class of goods.

Cross Q. 51. When did you commence the first warp of the heavy class of goods?

A. As near as I can remember it would be the early part of April, 1869.

Cross Q. 52. When did you finish that warp?

A. About three weeks after that; the warp lasted me about three weeks.

Cross Q. 53. How many more warps of that heavy class of goods did you put on?

A. I believe I put four warps on altogether. There might be five; I won't be certain.

Cross Q. 54. When did you put on the last warp of that heavy class of goods for Mr. Dalton?

A. It would be, as near as I could remember—I have got no record of it—it would be about August or September of that same year.

Cross Q. 55. Now, might it not have been that Mr. Dalton first spoke to you of that heavy and fine-meshed net while the last warp of that heavy class of goods was on your machine?

A. No, sir; because I continued on making that class of goods after he had tried the experiments.

Cross Q. 56. Might it not have been the last warp but one of that heavy class of goods?

A. No, sir; I don't think it was.

Cross Q. 57. Why don't you think it was?

A. Simply because the material that I was making these goods of was a material that was not commonly used in head-nets, consequently the silk had to be ordered before I could use it, and so between the first, second, and third warps I had to lose time on account of the silk not being manufactured in time.

Cross Q. 58. How much time did you lose for the above reason between the first and second warps?

A. It might be three or four days.

Cross Q. 59. What has that loss of time to do with the
84 explanation given to you by Mr. Dalton of his alleged new invention?

A. It causes me to come pretty near to the time when he spoke to me about it.

Cross Q. 60. When was the second warp of that heavy class of goods finished?

A. As near as I can remember, it would be somewhere toward the latter end of May, 1869.

Cross Q. 61. Well, according to that, Mr. Dalton's explanation of his alleged new invention must have been given in May, and not in June or July, for in answer to cross-q. 50 you state that he explained it to you while you had only got the second warp on the machine; is that so?

A. I little thought these things would be called over again, and the second warp may have lasted considerably after the end of May.

Cross Q. 62. Have you been shown the exhibits in this case, both complainant's and defendant's, before you were sworn as a witness?

(Objected to as indefinite, and because it does not appear that the witness knows what exhibits have been put in by complainant or defendant.)

A. No; I have seen them, but I have not been shown them; I have seen odd ones.

Cross Q. 63. Were you present during the examination of the witness, Williamson, in behalf of the defendant in this cause?

A. A portion of the time.

Cross Q. 64. Who invited you to be present at such examination?

A. Mr. Dalton came over and asked me if I would give my testimony in regard to the net he asked me to try to make. He did not say there was an examination going on. I had not understood that there was any examination going on at that time.

Cross Q. 65. Were you introduced, during such examination of Williamson, to defendant's counsel there present?

85 A. I don't remember that I was. In fact, to tell you the truth, until you rebuked Mr. Dalton, and said that Mr. Dalton had no business to bring me there during the testimony of one of the witnesses of the defendant, I did not know which gentleman appeared for either party.

Cross Q. 66. Have you read Williamson's testimony or what purported to be his testimony, before you appeared as a witness in this cause?

A. No, sir.

Cross Q. 67. Why did you not succeed in making the net which Mr. Dalton described to you, as you said?

A. In the first place, the machine was not in a condition to make it without spending quite a little time in getting the bars ready; then it appeared to us that Mr. Dalton did not want to lose too much time, as he told us to stop on that and go on with our usual work.

Cross Q. 68. How long would it have taken you to put the machine in condition for making that net?

A. We could have the machine in condition in probably two or three days, but then we might have tried two or three weeks and not have came at that identical net.

Cross Q. 69. If you are well acquainted with the lace-machine and its operation, are you not always positive as to the results obtained from the operation, and from a certain position or condition of the bars?

A. In some instances; not in all.

Cross Q. 70. What peculiar difference does the making of a net having a heavy and light warp and heavy and light bobbin threads involve, as compared with the making of a net of one thickness of thread only?

A. Are you alluding to the man that works the machine?

Cross Q. 71. I am alluding to what the man who works the machine is doing with the machine.

(Objected to as indefinite, as it leaves it to conjecture whether the machine is in readiness for such work, all necessary changes having been made therefor, or whether it is not in readiness.)

86 A. There is very little difference in the making of either one of them when they are well put upon the machine, but it requires an expert hand to put the net on with the thick and fine thread in it.

Cross Q. 72. Is it not a common thing to produce on lace-machines fabrics having thick and fine threads?

A. Yes, sir; in the shape of laces, shawls, &c.

Cross Q. 73. Such laces, for example, as defendant's Exhibit 16?

A. Yes; and they make a variety of things in the shape of laces—that's what we should call a footing.

Cross Q. 74. Are you not sufficiently an expert to put a net on the machine with thick and fine thread in it?

A. I could now, since I have seen the net.

Cross Q. 75. Did not Mr. Dalton describe the net to you so plainly that you could fully understand it and know what he meant?

A. He told us what he wanted making, but he didn't tell us how to make it.

Cross Q. 76. When you experimented for the purpose of producing the net Mr. Dalton had described to you, did you know that what you were trying to make would be the exact article he had described to you?

A. Well, he wanted a net making with thick and fine threads in it; he did not say how he wanted it making; he thought at the time the one we were trying at would suffice what he wanted.

Cross Q. 77. What was the result of your experiment?

A. We did not come to any definite result; we did not spend time enough.

Cross Q. 78. Did you not even produce a small piece of fabric during such experiment?

A. Yes; we produced a small piece, but there was nothing definite in it; there was nothing in it that we intended it to be when we started.

Cross Q. 79. Was the machine not capable of making it, or why did you not succeed?

A. Not in its then present condition, as we wanted more bars to experiment with.

87 Cross Q. 80. How many Leaver's lace-machine nets were in Mr. Dalton's shop at the time of such experiment?

A. Two.

Cross Q. 81. Who worked them?

A. Mr. Williamson one and myself the other.

Cross Q. 82. Why did you try the experiment on Williamson's machine and not on yours?

A. Because my machine was engaged at the time and Williamson's was not.

Cross Q. 83. Do you know why Williamson's machine was not engaged at the time?

A. Because his warp was off.

Cross Q. 84. How were you paid by Mr. Dalton, by the week or by the piece?

A. When we were running the machine, making nets, we were on piece-work; all the time that was spent not making nets, repairing machines, fixing warping, &c., we were paid at the rate of thirty cents an hour.

Cross Q. 85. How were you paid when there was no work at all for you?

A. Well, then we wasn't paid at all.

Cross Q. 86. Did that ever occur to you while you were in Dalton's employ?

A. Yes; I had two or three times; during Mr. Dalton's visit to England he left his partner to attend to the business, and then I had to wait two or three weeks for silk, which I should not have had to do had Mr. Dalton been home.

Cross Q. 87. When did Mr. Dalton go to England and when did he return?

A. He went to England the latter end of 1869; I think it was December; I could not positively say; he was away some ten or eleven weeks, I think.

Cross Q. 88. What is the name of his partner?

A. Mr. Noyes.

Cross Q. 89. Were you present when Mr. Dalton paid Mr. Williamson for his labor in the aforementioned experiment?

A. No; I was not.

88 Cross Q. 90. Did Mr. Dalton, after he had described to you his new net which he wanted you to make, converse with you on the same subject; and, if so, how long afterwards?

A. Why, he would speak about it two or three times afterwards, but how long afterwards I could not say; it might have been a few days; he said he would like to have the net made.

Cross Q. 91. Did he after that first conversation ever again ask you to try and make that net?

A. No; I do not think he did.

Cross Q. 92. Was there no warp at all on Williamson's machine when Mr. Dalton asked you to try and produce the new net?

A. Yes.

Cross Q. 93. In what respect does the net on Exhibit K differ from the net you were trying to make for Mr. Dalton?

A. The one we were trying to make for Mr. Dalton, one of the fine threads, in place of going through between the thick ones, would have worked down along with the thick one till such time as was necessary to bring it into the centre of the large diamond, and there cause it to connect with the fine thread working similar on the other side of the diamond.

Cross Q. 94. Then this net Exhibit C is more like what you were trying to produce, is it?

A. A similar net to that, to that one, only the hole would be considerably larger than the one we were making; only the fine thread is the groundwork of this Exhibit C; in the one we were trying the thick threads would have been the groundwork.

Cross Q. 95. What do you mean by the term groundwork in your last answer?

A. In that article the fine thread is the groundwork, the foundation of the article, Exhibit C. If you cut the fine thread out it goes to pieces.

Cross Q. 96. Well, would it not go to pieces if you cut the heavy thread out of Exhibit C?

A. No.

89 Cross Q. 97. Just cut a few of the heavy threads of Exhibit C, and then answer cross q. 96 again.

A. It goes to pieces to a certain extent. It does not leave the groundwork perfect by so doing.

Cross Q. 98. Are the fine pillars of the net on Exhibit K made of single or double threads?

A. They are composed of double threads to each pillar.

Cross Q. 99. And the coarse pillars of that net, are they also composed of double threads?

A. Yes, sir.

Cross Q. 100. Do you find that both threads of each fine pillar of Exhibit C pass, where they cross the heavy pillar, between the two threads of such heavy pillar?

A. It is not necessary to do so. It all depends how you place the bars in the machine.

Cross Q. 101. Is it so in Exhibit K?

A. I believe in that one it is alternately one fine one and one thick one.

Cross Q. 102. Please examine the nets contained in the defendant's

Exhibit 3, and state on what machine they have been made, if you know.

(Objected to as not proper subject of cross-examination, no foundation being laid therefor in the direct.)

A. I believe they were made on warp-machines.

Cross Q. 103. On the same kind of a machine as Exhibit 2, is that it?

A. On a similar machine.

Cross Q. 104. Who told you that the fabric which was made by Thomas Hooton and E. West six or seven years ago, and which was like Exhibit 2, was intended for ladies' vails, &c.?

A. Well, it was generally talked of in the trade.

Cross Q. 105. Had you anything to do with the cutting of such fabrics into vails or falls?

A. No, sir.

Cross Q. 106. Please examine the fabric, Exhibit 2, and state whether you find pillars of thick thread in the same, forming meshes, that are crossed by finer threads.

90 A. The finer threads do not cross the thick ones; it is the thick ones that cross the finer threads.

Cross Q. 107. I did not ask whether the fine threads cross the thick threads, but whether the finer threads extend across the meshes or diamond-shaped spaces that are formed by heavier thread.

A. It is the thick thread crosses over the finer meshes, and they are so worked in to save the trouble and expense of clipping them.

(The latter part of answer objected to by counsel for defendant as not responsive to that volunteered.)

Cross Q. 108. Do not the fine threads of Exhibit 2 loop around the thick thread?

A. That I cannot say. I am not so experienced a warp-hand as to say whether they are looped around or not.

Cross Q. 109. Can you not see it with your eyes?

A. No, sir; I cannot.

Cross Q. 110. Can you not see it with the aid of this magnifying-glass?

A. I believe it crosses over at the time the loop is made, and so gets worked in along with the loop.

Cross Q. 111. From what do you infer that the tidy, Exhibit 12, has been made by hand?

A. Because there is a knot tied on the corner of the large, thick mesh that formes the diamond, which otherwise cannot be tied on the machine.

Cross Q. 112. How do you know that hair-nets have not been manufactured in this country previous to the year 1864?

A. They have been made by hand; there was only three lace-machines in the country till about 1861; those were imported for a different purpose altogether.

Cross Q. 113. Who told you that?

A. Parties that had worked them.

Cross Q. 114. Do you know who owned those three lace-machines that were in this country previous to 1861?

A. One belonged to Spencer, of Germantown, Penn.; the other

91 one belonged to Martin Landenberg, of Philadelphia, Penn.; the other I don't know the owner of it, but it stood in a room belonging to Norman M. Kerr, a paper-bag manufacturer, in North 3d street, Philadelphia.

Cross Q. 115. Did you first work at Philadelphia when you came to the United States?

A. Yes.

Cross 116. And there you were engaged by Mr. Bachmann. How long did you work for him?

A. From May, 1864, to January 7, 1865.

Cross Q. 117. During what time of your stay in this country were you not in the lace business?

A. From January, 1865, till the latter end of September, 1868, and a few months previous to Bachmann's engaging me in Philadelphia.

Cross Q. 118. Did you subsequent to September, 1868, work for M. B. Bachman; and, if so, when?

A. From March, 1870, till either September or October following; I would not be certain which.

Cross Q. 119. When did you see the first hair-net similar to Exhibits C, E, or S?

A. I couldn't tell you exactly when it was that I see it, but there was a net of this description, Exhibit F, that was bought of a store in New York. The parties that bought it handed it over to Messrs. Dexter & Deverill, and they began to try to make it—they spent quite a little time in trying to make it; whether they succeeded or not I couldn't say.

Cross Q. 120. When, about, was that net bought in the store in New York?

A. It would be somewhere about the summer or fall—I couldn't say to a month or two—in 1872.

Cross Q. 121. And that was when you first in your life saw a hair-net with thick and thin threads; is that so?

A. Well, this must have been previous to 1872. I must have made a mistake in the date of that.

Cross Q. 122. Were you present when that net was bought?

A. No, sir.

Cross Q. 123. Where did you see it first?

92 A. In Messrs. Dexter & Deverill's shop, corner South 11th and 1st street, Williamsburg, N. Y.

Cross Q. 124. Who showed it to you?

A. Mr. John Dexter.

Cross Q. 125. Were you at work in his shop at that time?

A. No, sir.

Cross Q. 126. What caused you to go to his shop?

A. Well, I suppose I wanted to borrow something I hadn't got that I wanted to use. If I wanted anything to use that I hadn't got of my own, I would go and borrow.

Cross Q. 127. Was it while Mr. Williamson was your partner that you saw such net?

A. No, sir. I believe we had dissolved at that time.

Cross Q. 128. When did you dissolve partnership with Mr. Williamson?

A. It must be sixteen or seventeen months ago, now. I couldn't say to a month, now.

Cross Q. 129. That was about February, 1872, then, that the partnership was dissolved, was it not?

A. Yes; it was previous to that; somewhere about January, I think.

Cross Q. 130. Do you remember whether it was winter or summer when you first saw that net in the place of Dexter & Deverill?

A. I believe it was in the summer—summer or fall—somewhere about that time.

Cross Q. 131. Will you swear that the net you saw at Dexter & Deverill's place in the summer or fall following the dissolution of your partnership with Mr. W. was the first one you ever saw having thick and thin threads?

A. It might have been previous to the dissolving of the partnership, but for what I know the one I see at Dexter & Deverill's is the first one that I ever did see.

Cross Q. 132. What kind of work were you doing for Mr. Bachman between March and October, 1870?

A. Making hair-nets.

Cross Q. 133. What kind of hair-nets?

A. Two different kinds; one commonly called invisibles; the other was known by the number of No. 775.

93 Cross Q. 134. Is this net, Exhibit 10, something like the one commonly called the invisible?

A. No, sir.

Cross Q. 135. Can you describe the net known as invisible?

A. If you cut the thick threads away from this net, Exhibit E, it will leave the invisible.

Cross Q. 136. Can you describe the net known as No. 775?

A. A hole about the same size as that Exhibit 6, only made of heavy silk.

Cross Q. 137. Did you never see a net like Exhibit 6 in Mr. Buchanan's place?

A. No, sir.

Cross Q. 138. Why do you think that a head-net made like Exhibit 12 could not be used in cotton?

A. Because the nets would not fetch enough to pay for the making of them.

Cross Q. 139. But suppose they were made, could they not be used as hair-nets?

A. I suppose if they made them they would have to use them. There are plenty of things made that we don't get any profit out of.

Cross Q. 140. Is that why hair-nets are usually made of silk?

A. Hair-nets being made of silk enables us to demand a better price for them.

Cross Q. 141. Can you detect any silk in Exhibit 6?

A. No, sir.

Cross Q. 142. Can you tell on what kind of a machine Exhibit 6 is made?

A. Made on a Leaver's lace-machine.

And in answer to the direct examination, the witness deposes and says as follows:

R. D. Q. 143. Was the net you saw at Dexter & Deverill's marked in any way on the card on which it was marked, if it was carded?

A. It was not on a card. There was this mark on it; they had

94 been cutting the meshes to pieces to see how it was made.

R. D. Q. 144. Did you examine the meshes of that net to see how it was made?

A. Yes.

R. D. Q. 145. How did the construction of the meshes compare with the construction of the meshes of Mr. Dalton's net, Exhibit E?

A. Just the same.

R. D. Q. 146. Did you know, or did you learn, when you saw that net at Dexter & Deverell's, whose manufacture it was of? and, if so, state whose.

(Objected to as calling for hearsay.)

A. I heard some weeks previous that there was a new net in the market, but who was making it I did not know; but when Mr. Dexter showed it to me he said it was one of Mr. Dalton's make.

R. D. Q. 147. By what name was the heavy hair-net known which as you say you was working at Mr. Dalton's at the time in 1869 when he first described to you his new net?

(Objected to as immaterial.)

A. I believe it is known by the name of the City Queen.

R. D. Q. 148. Was Williamson also working on hair-nets at that time; and, if so, on what description, and how called?

A. Mr. Williamson was engaged in making two or three kinds of nets when I was making these heavy ones; the names or number I could not give you at present.

R. D. Q. 149. You say in answer to cross-q. 92 that there was warp in Williamson's machine when Mr. Dalton asked you to try and produce the new net. Do you recollect whether there was at that time much or little warp on Williamson's machine?

(Objected to as already answered in Q. 18.)

A. There was a very small quantity on.

R. D. Q. 150. Compare Exhibit 2 with complainant's exhibit "Spotted net Soar," and state whether they belong to the same class or to defendant's classes of goods.

95 (Objected to as indefinite and calling for an opinion, and not redirect examination.)

A. This exhibit, Spotted net Soar, is made on a Leaver's lace-machine. This Exhibit 2 was made upon a warp-machine. They both belong to one class of goods.

R. D. Q. 151. State for what purpose the thick thread in Exhibit 2 is used therein.

(Same objection, and as calling for hearsay evidence.)

A. For making the spot.

R. D. Q. 152. Hear the officer read cross-q. and answer 111, and state what you mean by the words "which otherwise cannot be tied on the machine," and state to what machine you refer.

A. To the Leaver's lace-machine. The knot which is tied by hand cannot be made in the machine.

JOHN WINLEY.

Subscribed and sworn to before me June 10, 1873.

R. E. STILLWELL,
Examiner, &c.

JOHN VAN VAN ARSDALE, a witness called and sworn on behalf of complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. John V. Van Arsdale; age, 30 years; residence, Brooklyn, N. Y.; occupation, custom-house clerk, of the port of New York.

Q. 2. At whose request do you attend here as a witness?

A. By the request of the chief of the 9th division of the New York custom-house—the chief clerk.

Q. 3. State if he requested you to comply with a subpœna; and, if so, can you produce such subpœna, or a copy of the same?

A. He did. I produce a copy of the subpœna.

(Counsel for complainant offers the paper produced by the
96 witness in evidence, and it is marked "Van Arsdale; a subpœna exhibit; R. E. P., examiner.")

Q. 4. State if you know whether search has been made in the custom-house for the papers mentioned in said Van Arsdale subpœna exhibit; and, if you know, who made the same and with what result?

A. I know that search has been made by myself, and I find two entries, two invoices, and one triplicate invoice.

Q. 5. Did any one direct you to make such search; and, if so, who?

A. When a subpœna is served on the collector, the subpœna is given to me. I take the subpœna and make search for the papers called for.

Q. 6. Will you produce the papers you say you have found, as stated in your answer 4?

A. Yes, sir.

Q. 7. Can you leave the same to be made exhibits in this suit?

A. No, sir. The directions are that when papers are produced in court or before a commissioner, to have the papers returned to the custom-house.

Q. 8. Will you make or cause to have made copies of the papers you now produce, and produce such copies at three p. m. next Monday at this office?

A. Yes, sir.

Q. 9. Can you leave with the office the copy of subpœna you have produced?

A. No, sir; because the subpœnas are always placed on file.

Q. 10. Please compare the paper I here hand you with the said copy of the subpœna, and state what the same is.

A. I have compared it. It is the original subpœna.

(Counsel for complainant offers the said original in evidence as an exhibit in place of the copy.)

Q. 11. State in and during what period you searched in obedience to such subpœna.

A. From May, 1869, to November, 1869, inclusive.

97 Q. 12. Are the entries and services and the duplicate invoice you have here produced, the only papers you have been able to find in the custom-house which answer to or correspond with the demand in said subpœna?

(Objected to as incompetent, the witness not being the person commanded in said subpœna to search for and produce such papers, and counsel for defendant gives notice that he will object to the introduction in evidence of any papers produced by this witness unless the same are accompanied by affidavit of Chester A. Arthur, or other competent proof, from which it will appear that they are necessarily all the papers called for in the subpœna, and not merely some of such papers.)

A. They are.

Q. 13. State whether or not you find, after your search aforesaid, any other services or entries or evidences in the custom-house of this port, or any importations made thereat by or on behalf of Abraham G. Jennings, besides those you here now produce.

A. I have produced all that I found during that period mentioned in the subpœna.

Q. 14. Please give us the numbers of said papers, the name of the importer, the article imported, and their value, and the time of importation, the place of exportation, and the agent or custom-house broker who acted thereon.

A. One invoice is No. 941, imported by A. G. Jennings, per City of Brooklyn, October 5, 1869. The article is one wheel, marked M. R., in diamond, from Prospect Place, September 17, 1869, near Nottingham. Mr. A. G. Jennings bought of Mr. Robinson old machinery weaving

seam, for the sum of seven pounds ten shillings. I have also the entry to correspond with that invoice. Now, I have an invoice here, the consul's No. 6903, imported by A. G. Jennings, per Nebraska, November 13, 1869, marked A. G. J., over New York. The goods mentioned therein are 1,000 gross of black lustre sanderling; the date of the consul's or invoice written either side is 28th day of October, 1869. I have the entry and consul's invoice to correspond with the original invoice number 6903. That's all I have.

98 Q. 15. Do these papers show who acted as broker or agent for Jennings in passing these goods through the custom-house; if so, who?

(Objected to as immaterial, and not relating to any issue in this case.)

A. The entries are made out on Edward A. Bibby & Co.'s blanks, as their name appears in the entry.

Adjourned to Saturday, June 14, thence to June 17, thence to June 20, thence to June 23, thence to June 25, 1873.

Present: Counsel for both parties.

JOHN V. VAN ARSDALE being further examined, deposes and says:

Q. 16. Have you made copies of the invoices and entries as you was requested to do by 08; and, if yea, will you produce the same?

A. I have; and I now produce them.

Q. 17. Have you compared the copies you now produce with said invoices? and, if so, state whether or not the said copies are true and correct copies thereof.

A. I have; they are correct.

(Counsel for complainant offers in evidence the copies produced by the witness, and they are marked "Van Arsdale Exhibits 1 to 5," both inclusive.

(Counsel for defendant objects to the introduction of these exhibits in evidence, for the reason given after Q. 12.)

Q. 18. Have you here with you the original invoices, entries, and papers from the custom-house, of which these Van Arsdale Exhibits 1 to 5 are copies?

A. I have.

Q. 19. Will you allow the counsel for defendant to inspect said originals here?

A. I will.

(The counsel for complainant notifies counsel for defendant that
99 he is at liberty to examine said originals and to compare the same with the copies, Exhibits Van Arsdale 1 to 5, which originals the witness produces for that purpose.)

Q. 20. State whether or not you received instructions or permission from the collector of customs, or his deputy, of the New York custom-house to make these copies, Van Arsdale Exhibits 1 to 5.

A. I did, sir.

And in answer to cross-examination the witness deposes and says as follows:

Cross Q. 21. Do you solemnly swear that the papers of which Exhibits 1 to 5 Van Arsdale are said to be copies, are all the papers relating to importations made through the custom-house at this port on behalf of A. G. Jennings from May, 1869, to November, 1869?

A. Those are all I find on file, sir, after making a search. There may be some stuck away somewhere. When I made the search I looked where they ought to be.

Cross Q. 22. Upon making the search did you find any invoice relating to importations of lace-machinery during the time specified in your subpœna, and whereon A. G. Jennings appears as bondsman?

(Objected to as irrelevant and immaterial, and not proper subject for cross-examination.)

A. No, sir. I would have to refer to the bond-books for that.

Cross Q. 23. Are you acquainted with A. G. Jennings, defendant in this cause? and, if so, state whenyou last saw him, and what transpired during the meeting.

(Objected to as before to cross-q. 22.)

A. I have seen Mr. Jennings twice. The first time was one evening he came over to the house when I was sick. He gave me a little strip of paper containing an importation of some machinery that he got. He got the memorandum from Edward A. Billy & Co. by the vessel City of London, July, 1869, I think. He said that he had an importation, and that memorandum he got so as to get the papers.

100 (Counsel for complainant objects to the answer as irrelevant and immaterial, and as hearsay, and as not proper testimony.)

Q. 24. Did Mr. Jennings, during the first or second interview, request you to search in the custom-house for the papers relating to such importation by the City of London in July, 1869, and to bring these papers, if found, with you to this examination?

(Same objection as to cross-question 22.)

A. The memorandum that Mr. Jennings gave me was an importation made by himself; he requested me.

Q. 25. Did you not search, as requested by Mr. Jennings?

(Same objection repeated.)

A. Yes, sir; I did.

Q. 26. Did you find record of such importation in the custom-house?

(Same objection repeated.)

A. I did.

Q. 27. Did you bring the papers referring thereto with you; and, if not, why not?

(Same objection repeated.)

A. I did.

Q. 28. Will you please produce them, and read from them the number of the invoice, the name of the exporter, the articles imported, their value, the time of importation, the name of importer, the place of exportation, and the name of the agent or broker; and state also if in any of these papers the name of A. G. Jennings appears; and, if so, how it appears.

(Same objection repeated.)

A. The invoice-number of appraisals is 7129; the invoice is dated Prospect Place, June 2nd, 1869, to John Robinson, bought of Matthew Robinson, one old weaving-loom, for the sum of £15; three cases and two pieces, screwed together, marked thus—J. R.—in diamond; and there is another invoice attached to it dated at Nottingham, July 1st, 1869; this is Mr. John Robinson bought of Samuel Hancock; the articles are:

101

	£	s.	d.
9 lbs. 7 oz. 25 s. black spun-hard twist	7	13	0
37 lbs. 12 oz. 25 s. " " " patent finish	33	19	6
12 lbs. 6 oz. 35 s. long-spun medium twist	10	10	4
24 lbs. 8 oz. 35 s. long-spun super-medium twist	23	5	6
10 lbs. 8 oz. 70 s. long-spun, weighted, medium twist	14	16	0
	£90	4	4

I have also the duplicate or consul's invoice, which is numbered 89; it is like the others, with the exception that both these bear date July 2d, 1864, and both are signed by Mathew Robinson; and I might say also that there appears on the triplicate invoice for the twist goods the name of A. G. Jennings, the following: M. Robinson for A. G. Jennings, bought of Samuel Hancock; the entry is made on one of E. A. Bibby & Co.'s blanks; the time of importation is the 21st July, 1869; the entry is signed by John Robinson, and imported by J. Robinson.

(Counsel for complainant objects to the answer for the same reason as the question.)

Cross Q. 29. Do you call this two invoices, or is it one invoice on two pieces of paper?

(Same objection repeated.)

A. One invoice has the appraiser's report, has machinery, &c., as noted, passed July 29, 1869, and signed S. P. W., examiner. I say it is one invoice.

Cross Q. 30. Do you find on these papers, or on one of them, any mark showing that a bond was given for the goods imported?

(Same objection repeated.)

A. I find on the consul's invoice in red ink, "No. 3036," the word "cancelled," January 28, 1870, and the initials are E. M. S.

102 Cross Q. 31. Can you, from that number and date just quoted, ascertain in whose name the bond was signed?

(Same objection repeated.)

A. I suppose I can.

Cross Q. 32. Will you please do so and report the result of your search at the next meeting of this examination?

(Same objection repeated.)

A. I will.

Adjourned to Tuesday, July 1, 1873, 11 a. m.

Adjourned to Wednesday, July 2, 1873.

NEW YORK, *Wednesday, July* 2, 1873.

Present: Counsel for both parties.

JOHN V. VAN ARSDALE, being further cross-examined, deposes and says as follows:

Cross Q. 33. Did you search for the bond that related to the importation by J. Robinson, July 21, 1869, as testified to by you during your last examination in this case, and did you find it?

(Objected to as irrelevant.)

A. I did search, and also found it, and produce it here.

Cross Q. 34. Please read from this bond the name of the obligor, the name of the importer, vessel, port of exportation, the goods imported, and who from, their value, and the date of the bond.

(Same objection continued.)

A. I quote J. Robinson and A. G. Jennings, obligors; J. Robinson, importer; the city of London, from Liverpool, July the 21st, 1869; marked R in diamond, three cases second-hand iron machinery, &c., from Matthew Robinson, Nottingham, July 1, 1869; the value £105 4s 4d.; the bond dated July 21, 1869.

And in answer to redirect examination, the witness deposes and says as follows:

R. D. Q. 35. Look at the "entry" of the custom-house of the above importation, and state who swears therein as the owner of the goods imported.

103 A. John Robinson signs his name to the owner's oath of date July 21, 1869.

R. D. Q. 36. Look at the original invoice, and state if A. G. Jennings' name occurs thereon at all.

A. I don't see it.

R. D. Q. 37. Is the triplicate invoice composed of two separate accounts or bills; and, if so, what are each for?

A. There are two papers attached together, but I think they are one bill. Yes; I am sure they are one bill.

R. D. Q. 38. Will you please make a copy of the original and of the triplicate of this importation, and produce them at the adjourned day of this examination?

A. Yes, sir.

Adjourned to Tuesday, July 8, 1873, at 1.30 p. m.

NEW YORK, *July 8th*, 1873—1.30 p. m.

Present, counsel for both parties.

John V. Van Arsdale, continued:

R. D. Q. 39. Have you made and will you produce copies of the papers referred to in the last question?

A. I have; and I now produce them.

(The papers produced by the witness are offered in evidence by counsel for complainant, and are marked "Complainant's exhibits J. Robinson, 1, 2, 3, R. E. S., examiner.")

R. D. Q. 40. Have you compared the said copies, Exhibits J. Robinson, 1, 2, 3, with the original papers in the custom-house, of which they purport to be copies? and, if so, state whether or not they are correct copies thereof and of the whole thereof.

(Objected to by counsel for defendant, it not appearing of which paper the Exhibit J. Robinson 3 purports to be a copy, the same not having been called for by Q. 38.)

A. I have compared them, and find them true copies.

R. D. Q. 41. Of what is Exhibit J. Robinson 3 a copy?

A. Of the entry of goods imported by J. Robinson, by the City of London, July 22, 1869, relating to the importation in the Exhibits J. Robinson 1 and 2.

104 R. D. Q. 42. I observe that the entries J. Robinson 1 and 2 consist of separate pieces of paper, respectively, and fastened to each other. State why those copies, Exhibits J. Robinson 1 and 2, are in separate pieces.

A. Because the originals are in separate pieces.

And in answer to recross-examination, the witness says as follows:

Cross Q. 43. Is the original, of which Exhibit J. Robinson No. 2 is said to be a copy, also composed of two pieces that are pinned together like the copy?

A. They are two pieces, fastened together by some kind of mucilage.

Cross Q. 44. How are the three pieces comprising the original of J. Robinson Exhibit 1 cemented?

A. They are fastened by a string, and the string is covered with the seal of the consul on the outside of the invoice.

JOHN V. VAN ARSDALE.

Sworn to before me this 8th day of July, 1873.

R. E. STILWELL,
Examiner, &c.

NEW YORK, *Saturday, June* 14, 1373.

Present, counsel for both parties.

Charles Mahlers, a witness recalled and examined on behalf of complainant, deposes and says as follows:

Q. 1. Have you been previously examined in this case?

A. I have.

Q. 2. Look at the paper marked "Complainant's exhibit Soar," and state if you know who wrote thereon the words "Served copy of the above on Henry Soar, May 8, 1872, p. m."

(Objected to as immaterial.)

A. I did.

105 Q. 3. Do you recollect when you wrote the same?

A. I wrote it immediately upon returning to our office after serving the copy.

CHARLES MAHLERS.

Subscribed and sworn to before me this 14th day of June, 1873.

R. E. STILWELL,
Examiner.

JOHN MARR, a witness, called and sworn on behalf of the complainant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John Marr; my age is 47 years; residence in New Brighton, Staten Island; by occupation lace manufacturer, at 144 Centre street, New York.

Q. 2. How long have you been a lace manufacturer, or connected with that business?

A. Thirty years—a little over.

Q. 3. Where?

A. In Nottingham, England, first; then in Trenton, New Jersey; afterwards in New York.

Q. 4. Do you know who introduced the manufacture of lace by machinery into the United States; if so, who?

A. Myself, so far as my knowledge is concerned.

Q. 5. When?

A. In 1861.

Q. 6. Do you know whether or not it has been possible for lace-makers in the United States to procure lace-making machines in this country?

(Objected to as indefinite.)

A. They can procure them from the other side.

Q. 6. Where do you mean by the other side?

A. From Nottingham, England.

Q. 8. Do you know of any manufacturer of such machinery in the United States, or have you known any such from 1861 down to the present time?

(Objected to as immaterial.)

106 A. None excepting myself.

Q. 9. How many such machines have you manufactured in this country, and when and for whom?

A. I have built two; one in 1870, and one this year—both for myself.

Q. 10. State what knowledge and experience, if any, you have had in the manufacture of ladies' hair-nets.

A. I believe I was the first manufacturer in the United States; com-

menced to manufacture hair-nets in 1864, and have continued to manufacture that kind of goods up to the present time.

Q. 11. State whether or not you have been accustomed in the course of your business to become acquainted with the different styles of ladies' hair-nets placed in the market or brought out in the trade?

A. I have, sir.

Q. 12. Look at the hair-nets, complainant's exhibit E, and at the complainant's patent Exhibit A, and state whether or not any hair-net of the kind represented by such exhibit has been known to the lace-making trade in this country or elsewhere, so far as you know, previous to said patent?

(Objected to as leading, suggestive, and incompetent.)

A. No, sir; not that I know of.

Q. 13. Do you know a lace-workman of the name of George Osborne?

A. I do.

Q. 14. What is his standing in respect to skill and experience as a workman on lace-making machinery?

(Objected to as calling for an opinion, which it has not been shown that the witness is competent to express.)

A. On such machinery that makes this particular net, Exhibit E, I think he knows absolutely nothing.

Q. 15. What means have you of judging of his skill and experience as a workman?

(Same objection, and as misconstruing the last answer of the witness.)

107 A. He has told me himself that he never run a machine of this kind that made this net, Exhibit E; that he has never had any experience in making this net, Exhibit E. He is a warp lace-weaver, which is a distinct class of machinery.

Q. 16. Have you any knowledge as to the means of skill he has as a warp lace-weaver? If so, what?

A. Only by repute—by repute he is of a medium class. He would not be styled a first-class, and he would not be called a common hand. He would be what we call in Nottingham parlance a second-rate man.

Q. 17. Judging from your knowledge of the business, and of the measure of skill as a warp lace-weaver possessed by George Osborne, would he be able, in your opinion, to produce on a warp lace-machine hair nets of the character of Exhibit E, or of that design, by means of the draught Exhibit 9?

(Objected to as calculated to mislead the witness, having distinctly sworn that he has no knowledge of the measure of skill possessed by George Osborne, only knowing of it by repute.)

A. It don't require any great measure of skill to produce it from that. Any common workman could produce it from that draft.

Q. 18. Compare Exhibit 2 and Exhibit E, and state whether or not you find them to be the same or different from each other, and give your reasons for any opinion you may express.

(Objected to as leading and indefinite, it being clear that the two exhibits cannot be and are not the same.)

A. They are two entirely different fabrics, produced on two entirely different classes of machinery. This Exhibit 2; I have seen this one twenty-two years ago—made it twenty-two years ago myself. The other fabric I have not seen until within the last three or four years, I am not sure which.

Q. 19. By what name was the fabric Exhibit 2 known in the trade?

A. It is known as dotted sleeve-net, manufactured on the warp loom, one of the convenient articles in the trade.

Q. 20. You say of Exhibit E—the other fabric I have not seen
108 until within the last three or four years. Do you know who first brought it out?

A. I have always understood Mr. Dalton to be the originator of it.

Q. 21. State what acquaintance you have with lace manufacturers in this city and Brooklyn, and their viciteas, and with dealers in such articles, and whether such acquaintance is extensive or otherwise.

(Objected to as immaterial and indefinite.)

A. What am I to understand by acquaintance; whether you intend a personal knowledge or an intimate acquaintance? I believe I know them all; that is, the manufacturers.

Q. 22. I mean personal acquaintance.

A. I am personally acquainted with a number of manufacturers, and personally with a number of dealers—the largest dealers, I may say, in ladies' hair-nets.

Q. 23. Do you know from such acquaintance how the net you have referred to as being first brought out by Mr. Dalton, Exhibit E, is regarded with respect to novelty by the manufacturers and dealers referred to in your last answer?

(Objected to as calling for hearsay evidence.)

A. It was regarded both as original and novel when it first came out, and it was carried around by the dealers to manufacturers as out of the ordinary line.

Q. 24. Do you know, or have you had dealings with, Matthew Robinson, of Nottingham, England?

A. I have had dealings with him for three or four years, and had a constant correspondence during that time.

Q. 25. During what years?

A. From 1866 to 1871, or may be a little later than that; he at various times sent me out scores of lace samples.

Q. 26. State whether or not during those years, or any part thereof, he undertook to keep you advised of new inventions or patterns or designs in lace goods, and, if so, to what extent.

(Objected to as leading and suggestive.)

A. He did not keep me advised as to new patterns, because he
109 had no occasion, I being a designer and draughtsman myself; but he kept me posted on all new styles of lace goods.

Q. 27. Did he, during his correspondence with you, ever send or inform you of any description of goods like Exhibit E?

(Same objection.)

A. No, sir.

And in answer to cross-examination, the witness says as follows:

Cross Q. 28. Did you, in answering question 12, know the date of complainant's patent Exhibit A, and if so, what date did you understand his patent to be of? Hear question and answer 12 read to you before replying.

A. I did not know the precise date—not the day of the month; there was no date stated to me in regard to this patent; the net was put in my hand with the date on it, and I might have noticed it had I took the trouble to observe it.

Cross Q. 29. But you did not observe it, did you?

A. It was not of sufficient interest to me for me to observe the date.

Cross Q. 30. If you had correspondence with Matthew Robinson you are certainly acquainted with his handwriting, are you not?

A. I am, sir.

Cross Q. 31. Please look at the letters Exhibits 13 and 14, and state whether, in your opinion, they are in the handwriting of the said Matthew Robinson.

A. I believe they are.

Cross Q. 32. Please examine also the letter I now hand you, and state whether, in your opinion, the same is in the handwriting of Matthew Robinson.

A. I believe it is.

(The letter referred to is to be offered in evidence by counsel for defendant, and marked "Defendant's Exhibit 17, R. E. S., Examiner.")

Cross Q. 33. At what place did you first see a net like Exhibit E?

110 A. At my own manufactory; I could not say at the moment whether I was then at 144 Centre street, or still at the Harlem depot, New York.

Cross Q. 34. When did you move to 144 Centre street?

A. I moved in May, 1870.

Cross Q. 35. Who first showed you that net like Exhibit E?

A. My agent, Mr. Robert Ferguson.

Cross Q. 36. Do you remember what conversation took place between you and Mr. Ferguson in regard to such net?

A. I do not; it is such a common occurrence to be shown nets that the conversation escapes my memory soon.

Cross Q. 37. Is Mr. Ferguson still in your employ?

A. He is, sir.

Cross Q. 38. Did he tell you where he obtained that net he first showed you?

A. He did not; he might have got the net from Mr. Dalton for anything I know.

Cross Q. 39. So he did not tell you that net was from Dalton, did he?

A. He did tell me that it was Dalton's net.

Cross Q. 40. Are you sure it was three years ago when you saw that net?

A. It is about that time. I would not swear as to dates; my memory was not charged sufficiently to remember.

Cross Q. 41. Might it not have been in 1871 when you saw that net?

A. I think not.

Cross Q. 42. Do you know J. Newbold, a lace-maker, now of this city?

A. I have seen the man; I have not personal acquaintance with him.

Cross Q. 43. Do you know when he came to the United States?

A. No, sir; I do not.

Cross Q. 44. Are you acquainted with the fact that Dalton did not make any nets like, or similar to, Exhibit E until after the arrival in this country of said Newbold?

111 A. I don't know anything about Newbold except that he called on me once, I know, to ask for a situation, and he offered to sell me a cut of net Mr. Dalton was making.

Cross Q. 45. How long have you been acquainted with J. Dalton, here present?

A. I believe since 1865.

Cross Q. 46. What do you know of his ability as a manufacturer of lace and worker of lace-machines?

A. I know nothing excepting by reputation.

Cross Q. 47. You have never observed him in his own business, then, have you?

A. I have never been in Mr. Dalton's place in my life,

Cross Q. 48. Did you ever learn that Mr. George Osborne has invented a new construction of lace-making machine, for which letters-patent of the United States, number 92995, were granted to him on the 27th day of July, 1869?

A. I saw his machine, but it was not a lace-machine at all. He never attempted to produce a lace on it. It was for the production of worsted goods. He showed it to me himself, and his letters-patent, too.

Cross Q. 49. Was not the letters-patent he showed you for improved lace-making machinery?

A. I think not. I don't remember. I believe now I am laboring under a mistake. I would like to hear question 48 read to me again.

(Question read to witness, and he answers as follows:)

I think that patent he showed me was a different patent. He never showed me any patent for the lace-machine. He showed me a machine which he had patented, but I am sure that was before 1869.

Cross Q. 50. Did you never hear of his patent for a lace-machine?

A. I never heard of any one's patent for a lace-machine in this country.

Cross Q. 51. Don't you think that the man who improves the intricate machinery used for the manufacture of lace, etc., must have a pretty good knowledge of the construction and operation of such machines?

112 A. No, sir; not at all; it don't follow at all. I know hundreds of men who are able to build machines, but who couldn't run them at all.

Cross Q. 52. In examining Exhibit 2 do you find in it thick and thin threads?

A. Yes, sir.

Cross Q. 53. Do the thick threads, when regarded alone, that is, without reference to the thin threads, form diamond-shaped meshes in such Exhibit 2?

A. They do as they lay here, but they are not diamond-shaped when making on the machine. They pulled or stretched into diamond shapes on the dressing-frame.

Cross Q. 54. Do the meshes of any fabric made on a warp lace-machine assume on the machine when making the shape which they subequently are to have?

A. Open fabrics do not, but close fabrics will.

Cross Q. 55. All hair-nets like Exhibits 2, 10, 8, &c., are what you call open fabrics, are they not?

A. Yes, sir.

Cross Q. 56. Please look at the fabric Exhibit 16, and state when first in this country you have known fabrics of that description.

A. I have made the same fabric myself 10 years ago—substantially like that.

JOHN MARR.

Subscribed and sworn to before me this 14th day of June, 1873.

R. E. STILWELL,
Examiner, &c.

NEW YORK, *Monday, June* 16, 1873.

Present, counsel for both parties.

JOSEPH DALTON, the plaintiff in this case, being sworn in his own behalf, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Joseph Dalton; 52 years; residence, 564 Lexington avenue, city of New York; occupation, inventor and manufacturer.

113 (Counsel for defendants objects to the examination of Joseph Dalton, on the ground that the same is an incompetent witness in this cause.)

Q. 2. What do you manufacture?

A. Knitting-machines, and lace goods and hosiery.

Q. 3. How long have you been acquainted with lace goods?

A. I think about thirty-eight years.

Q. 4. Where first did you have anything to do with lace goods, and in what capacity or business?

A. I went first as a boy for winding brass bobbins for lace purposes in England, at Bleakhill, Sherwood Forest, Nottinghamshire.

Q. 5. How long have you resided in the United States?

A. I think I came in September, the fall of 1847.

Q. 6. Are you the complainant in this suit, and the patentee named in the patent, Exhibit A?

A. I am, sir.

Q. 7. State the circumstances which led you to make the invention set forth in said patent, and the time when you made such invention.

A. There are two circumstances; the first, large mesh hair-nets had been very much in vogue; large mesh hair-nets, the meshes of which are about one inch square; the next call was for about one-quarter that size; so, having a large stock on hand of the old-fashioned mesh of the largest size, so I had to put my wits to work in order to contrive some means whereby to make them saleable. I went to Miss Brabson, my cutter-out, she being a hand hair-net manufacturer; so I asked her if she thought it would pay to run a small invisible silk thread across each mesh at right angles. She said, "I think not, Mr. Dalton." Therefore I discussed the idea with her. I was in a store above Canal street, about the same time, on the west side of Broadway; in the mean time a small lady came in; she had on one of those coarse large mesh hair-nets just spoken of, and most of the small short or stump hairs protruded

114 through the large meshes in great profusion, and so rendered that part of the hair very uncomely, and therefore forced the idea upon my mind that such unuseful nets could not be in demand much longer. So I returned to my shop in Brooklyn, E. D., with the full intention of making an intermediate fine, invisible mesh, interwoven by hand or machine if possible. I went to my workmen, Mr. Williamson and Mr. Windley, and described to them my idea of getting up a new fabric of this hair-net. I first asked Mr. Williamson, several days before his warp was off, whether he could produce this on his machine—that is, a Leaver's lace-machine. I cannot remember the reply he gave me. Then I went to Mr. Windley, working on another Leaver's lace-machine, and talked with him about it. Then, a short time afterward, he went to No. 1 machine, the one operated by Mr. Williamson, and held quite a conversation with Mr. Williamson about the same fabric, and they finally agreed to give it a trial between them as soon as circumstances would permit; and these circumstances were based on the grounds, I presume, to prevent both a loss of time and silk, the warp being about off at that time; and it is the only time we can try

anything new without much inconvenience. I mean the time when the warp is off. This was about the middle of the month of July, 1869.

Q. 8. State what, if anything, Windley and Williamson did with regard to the fabric you described to them.

A. Witness asks, about making the fabric?

Q. 9. Yes.

A. They took off their old cards—that is, Jacquard's—and either remodeled them or put up new ones, I cannot say which. What I mean by remodeling is punching different holes into the cards, so that the needles would penetrate these new holes, and thereby give a different traverse motion both to the old and the new bars to which they applied.

Q. 10. How did they succeed in this attempt?

A. Very indifferently.

(Answer objected to as indefinite by counsel for defendant.)

115 Q. 11. At whose expense was this trial?

(Objected to as leading.)

A. At mine, to the best of my knowledge; not even a single half hour was ever given to me by either Williamson or Windley, while in my employ; although I have assisted them very much, especially Mr. Williamson, for which I never charged him a cent.

(Answer objected to as unnecessarily prolix and volunteered by counsel for defendant.)

Q. 12. To whom did the wachers, the new bars, the cards, and the silk, or other goods used by them in their trial, belong?

A. I found everything.

Q. 13. Did they receive compensation for their time spent, and, if so, from whom, and how much?

(Objected to as leading.)

A. Would you ask me how much time they first made over the invention to get out the invention?

(Counsel for defendant objects against this novel method used by complainant and client to instruct the attorney.)

Q. 14. You are at liberty, in answering question 13, to state the time spent by them.

A. They spent from half to three-quarters of a day and the wages per day as set by the society—that is, the lace-makers' society—was, at first, two dollars and a half; then three dollars per day; and when that revision took place I cannot say, but I paid them at the rate of one of these aforesaid prices, to the best of my knowledge.

Q. 15. What was the state of your business at and about the time in 1869 when you made this invention?

(Objected to as indefinite, and wholly immaterial to any issue in this cause.)

A. It was passably good, I believe; only from falling from large mesh to small mesh hair-nets, caused a little delay, perhaps, on Mr. Windley's machine, but not on Mr. Williamson's, he being making invisible nets at the time.

(Objected to as not responsive to the question by counsel for defendant.)

116 Q. 16. Can you produce samples of the coarse net you have spoken of, and of the fine also, and will you do so?

(Objected to, no fine net having been spoken of by this witness.)

A. I can produce both; I have only one present, the other is at the shop; I produce the coarse one.

(Counsel for complainant offers in evidence the coarse net produced by the witness, which is marked "Complainant's exhibit P., R. E. S., examiner.")

RECESS.

Q. 17. Have you obtained during the recess a sample of the fine net you was asked to produce, and, if so, will you produce it?

(Same objection.)

A. I have, and now produce it.

(The net just produced by the witness is offered in evidence by counsel for complainant, and marked "Complainant's exhibit Q., R. E. S., examiner."

Q. 18. Look at Exhibit H, and state if you know who made the sketch or design marked as such Exhibit H?

A. I made it, sir.

Q. 19. When and for what purpose?

A. I designed it about the middle of July, 1869, for a ladies' hair-net.

Q. 20. Explain what the different lines composing that design represent?

A. The fine lines are meshes interwoven within the coarse lines in meshes—resemble the two nets I was then making when placed together.

Q. 21. Look at the three lines of pencil-writing which occur on the book-cover containing the design Exhibit H, immediately under that design, and state if you know who wrote the same and when, and explain, if you know, to what those lines of pencil-writing refer?

A. I made the Exhibit H, the draught, previous to the underwriting, which might have been made June or July, 1869, for the purpose
117 of reminding me of the time when I made the above draught. I wrote those under-lines in the latter part of July or the first of August, 1869. They refer to the draught alone.

(Counsel for complainant offers in evidence the three lines of pencil-writing referred to, and they are designated as complainant's exhibit R., R. E. S., examiner.

Counsel for defendant objects to the introduction of the exhibit in evidence, on the ground that it is incompetent, and also because the matter therein set forth does not agree with what this witness, in answer to Q. 7, has sworn to as being the fact.)

Q. 22. Read the pencil-writing, Exhibit R, and hear the officer read your answer to question 7, and state your best recollection of the fact referred to in said pencil-writing.

A. The draught is an independent affair from the statement made in answer to question 7. I cannot tell to a week or a fortnight when I made this little 3-mesh draft Exhibit H, and therefore I put about July 15, as near as I then could recollect. The under-writing was at that time thought entirely unnecessary, thinking my men were perfectly honest, and therefore would not attempt to take any design from me, or out of the shop, but what was strictly their own. But circumstances afterwards told a different story, convincing me that I was fully in the wrong.

(Answer objected to by counsel for defendant as not responsive to the question, and as containing a slander against witnesses who have testified in this cause, and whose character stands unimpeached, and the witness is requested by counsel for defendant to confine himself in his answers to the questions put him, and to abstain from giving vent to his feelings of spite and disappointment.)

Q. 23. Fully in the wrong about what?

(Objected to as calling for an opinion, and immaterial.)

A. That one of my workmen, especially Mr. Williamson, whom I

thought honorable, turned out very dishonorable by bringing a little piece of cloth to me, offering to sell it to me as invented or made by either him or his wife at home, resembling that of mine, something
118 like Exhibit 12. This he produced a number of weeks after he tried in conjunction with Mr. Windley to make my new net, but failed—by the introduction of this bogus piece of cloth tried to convey the idea that he was the inventor thereof, and so directly rob me of my first idea—and this he tried several times, and therefore that is the reason I looked upon this man as dishonest.

(Same objection as to last answer by counsel for defendant.)

Q. 24. In defendant's exhibit 5, which is a certified copy of your preliminary interference statement made to the Patent-Office, the following words occur: "that after deponent made said memorandum and sketch, he personally made some pieces of net by hand according to his instruction, one or two of which he left with Messrs. Van Santvoord and Hauff, his patent solicitors in New York, on or about the 11th day of December, 1869." Look at the piece of net-work I now show you, and state whether or not that is what is referred to in said statement?

(Objected to as leading and referring to matter not brought out by the preceding testimony, and defendant's counsel also objects to all reference by this witness to the net just shown him by his counsel, because under cover of showing the net a piece of paper to which such net is attached has also been handed to the witness.)

A. This is the net I made, and also improved, by inserting the sixteen fine meshes within one mesh of the coarse pillars; this was done at or close upon the time when my men failed to carry out my design. I sat down and made this myself at once, with a needle and silk thread, within a little fenced office in my shop in Williamsburgh; this was done so that I could more fully substantiate my claim to my new invention; and then I brought it myself to Mr. Hauff, of the firm of Van Santvoord & Hauff, located in New York.

Q. 25. For what purpose did you bring it to them?

A. For the purpose of obtaining a patent therefor, but told them to delay it until I could see whether or not my machines could produce it, or rather the men on them.

119 Q. 26. The said statements mentions December 11th, 1869, as the date when you left said sample net with said patent agents. State what your recollection is now as to the time when you left the same with them.

A. In the statement Exhibit 5, referring to the date December 11th, is an error, and that remarkably unaccountable, as evidence present, if admissible, can show. I brought this sample piece of net to the office of the aforesaid firm about or immediately afterwards; my men tried but failed making it on the machine. I sat down in the heat of my aspiration and made it at once, and at once passed it over to them, to the best of my recollection.

Q. 27. How do you explain the date December 11th, 1869, in the statement Exhibit 5, or the time you left it with said firm, and where was you December 11th, 1869?

A. I explain it in this wise: in 1869, shortly after my men failed in the production of the fabric described, my daughter had been, and was then, suffering seriously with fits, and I made up my mind to give her a foreign trip for the benefit of her health, and to do other business if possible; we left this for that purpose on the 24th day of November, 1869, for England, and was in Nottingham or London December 11th, at the time this unaccountable error took place in December 11th.

(Counsel for complainant offers in evidence the sample of net shown to the witness in Q. 24, and it is marked "Complainant's exhibit S, R. E. S., examiner.")

Q. 28. The sample net, Exhibit S, is pinned on a piece of paper, having thereon writing in pencil. Do you know whose writing it is?

A. It is mine, sir.

Q. 29. All of it?

A. No, sir.

Q. 30. Designate which is yours, and mention the first two words at the beginning and the end of your writing?

A. "Each mesh" at the beginning, and at the end, "of design."

Q. 31. Do you recollect when you wrote such writing?

120 A. The time of the trial of the invention on the Leaver's lace-machine. It might have been a little afterwards.

(The paper referred to is offered in evidence by complainant's counsel, and mark' "Complainant's exhibit S, R. E. S., examiner.")

Q. 32. What steps did you take after the trial by your workmen for manufacturing the new net?

A. I allowed it to lie in embryo for some little time, my daughter's sickness engrossing my whole attention for the time being, and finally concluded I would get it draughted in England, and say nothing more to my men about it.

Q. 33. Did you have any work done in England for that purpose, and if so, what?

A. I had. I went over to my relatives; left here the 7th of December, 1870, by the steamer China, of the Cunard line. I landed in Liverpool about the 17th of December, as near as I can guess, and from there I went to my relations' warehouse in Nottingham, England, the firm of Coulby & Archer, and to Mr. Richard Coulby I expressed my desire that he would inform me of an experienced draughtsman—that I had a little design which I had not been able to carry out in my adopted country, the United States. He observes, "Joseph, I think I can find you a man that can do just what you want him to do. His name is Brooksbank. He works for us, and I have no doubt he will assist you," or something to that effect. About the next day he sent for Mr. Brooksbank to the warehouse, and introduced me to Mr. Brooksbank as soon as he came. I described my invention to him, (Mr. Brooksbank,) and he said, "I think I can get it out for you, sir. I will try, and let you know in a day or two." He came some little time afterwards into the warehouse, and says, "I can do it for you, but it is very difficult," or something to that effect. He did get it out for me, and I think I paid him some £11 for it. It might be only £10, but I could not say to a pound either way. I then went and bought an old lace-machine of Mr. Hardy, of Nottingham, and had it thoroughly recruited up for that purpose, not having been able to find a coarse enough one in Not-

121 tingham—that is, a 5½ point, aside from a very narrow one, which would not answer my purpose at all. I gave it into the hands of W. H. Pratt for the purpose of recruiting it—that is, putting a new inside into it. He completed his work by about the 30th of June, or by about the 27th of May, 1871. A piece of cloth arrived to me from Mr. Brooksbank, made on said machine, to show the design was perfect and the machine finished. That piece of net fabric or cloth came about the 1st April, 1871, and the machine was shipped May 30, by the Abyssinia, and I got it here in New York in June, 1871.

Q. 34. Please produce the sample you have just spoken of sent to you from Nottingham.

A. I produce it.

(Counsel for complainant offers such sample in evidence, and it is marked "Complainant' Exhibit T, R. E. S., Examiner.")

Q. 35. Was any one sent out to you from Nottingham to a ljust the machine sent to you, as you have stated; if so, who?

A. Yes, sir; Mr. Jas. Newbold.

Q. 36. When did you commence selling your new hair-net in the market? I mean the net designed in your said patent.

A. Well, we first put the machine up to produce the nets some time before we got them in the market. We got the first net in the market September 27, 1871; sold some that date to Vogt & Dietzel, merchants of New York City.

Q. 37. To whom next, and when?

A. I believe Curran, Goodwin & Walker, 29th Sept., '71.

Q. 38. By what name or names have you designated your said net?

A. Theodora, Visible, Invisible, printed underneath; also Paris, Jubilee, Horace, Visible, Invisible, distinct from the two first numbers, and Dolly Varden.

Q. 39. What book is it which contains Exhibits H and R?

A. An old sales-book of my business of March, 1869; it begins with March, 1869, and ends with February, 1870.

122 Q. 40. You say you are an inventor and manager. Of what are you an inventor besides of the hair-net of the patent Exhibit A?

A. Of various kinds of knitting-machines, stop-motions, &c. I have obtained several patents in this country and in England. My first was in May 7th, 1861, for a knitting-machine; the second, December 19th, 1862; the third, June 28th, 1864; the fourth, September 22d, 1864; the fifth, October 9th, 1866; the sixth, April 28th, 1868; and the present one of March 5th, 1872.

Q. 41. You said, in your answer 7, that you first spoke to Mr. Williamson about your new hair-net, and then next spoke to Mr. Windley. In your memorandum, Exhibit R, on the sales-book cover, you say you named it to Windley and then Williamson. In what order did you speak to them about it? Give your best recollection.

A. Well, I spoke to them both a number of times, and therefore, as to which I spoke to first, I would not state positively, for it was a general conversation between us for several days before the warp was off.

Q. 42. What are Exhibits L, M, N, and from where obtained?

A. They are draughts and parts of draughts sent by Mr. Brooksbank, of Nottingham, England, by mail, to me in May, 1871, about the time of the arrival of the machine.

Q. 43. How was your new net, which you described to Mr. Brooksbanks, as you say, regarded by him in respect to novelty or want of novelty?

(Objected to as incompetent and immaterial.)

A. Mr. Brooksbanks told me to be sure and explain the way the fine threads went; in reference as to your new net being made in Nottingham two years ago, it is simply an assertion that cannot be proven.

Q 44. Is any part of your last answer quoted from any letter of Mr. B.? If so, please produce such letter.

(Same objection.)

A. It is. I produce the letter.

(Counsel for complainant offers in evidence the letter produced, and it is marked "Complainant's Exhibit U."

123 And in answer to cross-examination the witness says as follows:

Cross Q. 45. How often have you been in England during the last five years?

A. I could not say directly, but I think I have been once a year, or thereabouts, for a number of years until last year; I think I have made seven or eight or nine round-trips.

Cross Q. 46. When did you leave for England in 1871?

A. December 7th, by the China.

Cross Q. 47. When did you leave for England in 1870?

A. The first is a mistake. It was December 7, 1870, when I left by the China. I did not go, to my knowledge, in 1871.

Cross Q. 48. When did you leave for England in 1869?

A. November the 24th.

Cross Q. 49. When did you return from England in 1870?

A. About spring, I believe.

Cross Q. 50. Do you know the month?

A. I cannot remember. I know the hawthorn was in bud there.

Cross Q. 51. How did you remember the date of your departure?

A. By printed card of that date; it was a farewell token of respect to the hands.

Cross Q. 52. Where is that card?

A. Here it is.

Cross Q. 53. Who had that card printed?

A. I did.

Cross Q. 54. When was it printed, and by whom?

A. It was printed a few days previous, so as to have them ready for distribution, by the Brooklyn Times.

Cross Q. 55. Is that a newspaper, the Brooklyn Times?

A. I ought to have said the Daily Times. It is.

Cross Q. 56. Are you sure you left by the Russia in November, 1869?

A. I am, sir.

124 Cross Q. 57. You went to Nottingham then, did you not?

A. I did, sir.

Cross Q. 58. And there you described your invention to Mr. Brooksbank, did you?

A. I did not, sir, at that time.

Cross Q. 59. Why not?

A. On account of my daughter's health.

Cross Q. 60. Did you not attend to any business during that trip?

A. Not any, to the best of my knowledge.

Cross Q. 61. Did you not intend to do business during that trip?

A. I think I did, and so stated it, or it was in the Brooklyn Times.

Cross Q. 62. Was your daughter's sickness so severe while you were in England as to prevent you from attending to any bussiness whatever?

A. Her sickness was very severe; so much so that we dare not trust her to come down-stairs alone. She would drop on the steps, drop in the street, drop while combing her hair at the looking-glass; so I scarcely gave any heed to anything else, but took her with me from place to place in order to recuperate her health; but she got very little better, rather worse, if anything, and therefore I came back as soon as we got through our several visits without doing any business, and when I got back I got her in the hands of a New Jersey doctor; got through my summer sales and returned again in the same year, 1870, to complete the business left incomplete and carry out my new design.

Cross Q. 63. Did you not know what you swore to when you made oath to the preliminary statement of which Exhibit 5 is a copy?

A. What part do you refer to?

Cross Q. 64. To the preliminary statement which you have sworn to be correct.

(Counsel for complainant objects to the question because the witness has already explained what he has called an error in that statement.)

125 A. I did not, sir; I neither read it nor heard it read, to the best of my knowledge, and was only apprised of it a few days ago, which caused quite an altercation between me and Mr. Van Santvoord and Mr. Hauff.

Cross Q. 65. And although you never read it, nor heard it read, you signed your name to it, and made solemn oath on the 27th day of November, 1871, before W. H. Wicks, a commissioner of deeds, that such statement contained the whole truth. Are you in the habit of thus lightly considering the solemnity of an oath?

A. I believe I have done so before; that is to say, I believe I once read a document only partially through and signed my name to it without fully knowing its contents; this is what I mean by having done so before. In answer to the question 65, I did not understand you when you asked, "Are you in the habit of thus lightly considering the solemnity of an oath?" I replied, "I believe I have done so before;" but the cross-question, as put, was entirely misunderstood by me, and I herewith correct it at once; I am not in the habit of lightly considering the solemnity of any oath: I thought the question put conveyed the idea whether I had thus signed any document before without thoroughly reading it.

Adjourned to Tuesday, June 17, 1873, at 1½ p. m.

NEW YORK, *June* 17, 1873.

Present: Counsel for both parties.

The cross-examination of Joseph Dalton resumed.

(The witness requested that he be allowed to see Exhibit 5, and it is shown to him by counsel for defendant.)

Cross Q. 66. Did you swear to the preliminary statement of which Exhibit 5 is a certified copy?

A. I did.

126 Cross Q. 67. Did you read it before you swore to it?

A. Circumstances last night led me to believe I did, and that was in this building, at the desk of Mr. Hauff, by going before a notary public in this building and he refusing to take any money for his services, reminded me of reading that document at Mr. Hauff's desk; since I have taxed my recollection, I well remember making alterations therein; I first supposed that the machine arrived here about March or the first of April; I afterwards found it did not arrive until June, the same year; that was my reason I wished to correct my first statement, and I did do so.

Cross Q. 68. Your counsel just informed me that an amendment to the statement, of which Exhibit 5 is a copy, such amendment, correcting the date of the arrival of the machine, was sworn to by you a few days after you swore to the original statement; does this agree with your remembrance?

A. It does, sir. As soon as I found out I had made an error in my

first statement, as to the time of the arrival of the machine, I lost no time in correcting it at once.

Cross Q. 69. Did you not ascertain this error while reading your first statement?

A. I have not the slightest recollection; but I think I found it out by means of a bill of lading, which I could produce if necessary.

Cross Q. 70. Is it not possible that, instead of reading the preliminary statement before you signed it and swore to it, you only read the office copy subsequent to your swearing to the contents thereof, and that then, on detecting such error in the office copy, you requested the correction and *and* amendment of the original statement?

(Objected to as immaterial.)

A. I could not say, sir.

Cross Q. 71. Would you not have immediately corrected the original statement before signing it, had you noticed the error therein?

(Objected to as immaterial, and because the witness has already
127 alluded to the matter inquired about, when he said in answer to cross-q. 69 that he thinks he found it out by means of a bill of lading.)

A. I would, sir.

Cross Q. 72. Please look at the pencil endorsement on the Exhibit S, which reads, "Joseph Dalton, Dec. 11, 1869," and state whether you know what that date refers to.

(Objected to because no proper foundation has been laid for the question, and because the witness has not been connected with the making of said endorsement thereon, or with the placing of it thereon either by himself or any other person.)

A. I do not of itself, and can draw no reference from it only by conversation.

Cross Q. 73. By what conversation?

A. The conversation we had yesterday.

Cross Q. 74. Who do you mean by we in your last answer?

A. I believe Mr. Van Santvoord was one.

Cross Q. 75. What reference do you draw from such conversation as regards the date on Exhibit S?

(Objected to as immaterial, and as calling for an opinion, and for a conversation which appears in the answer to cross q. 74 to have been held by witness with his counsel.)

A. The inference I draw is that it relates to a wrong date.

Cross Q. 76. What inference do you draw from the correspondence of such date on Exhibit S with the date in Exhibit 5, as the date when you left some pieces of net made by you with your patent solicitors?

A. I can draw no other inference only that it relates to a wrong date and data as to the delivering of these goods or samples.

Cross Q. 77. How is it you did not ascertain at the time that the date December 11, 1869, mentioned in Exhibit 5 was wrong, although you say that you have read your preliminary statement?

A. I can only answer that, by saying that the brain by times commits an error as well as the eye.

128 Cross Q. 78. How long did Mr. Williamson remain in your employ?

A. I think he first commenced in 1865 or 1866 and left in 1870.

Cross Q. 79. Did you discharge him?

A. I did discharge him. Mr. Williamson was discharged from my employment for injuring my business through drunkenness.

(The latter part of answer objected to by counsel for defendant as not responsive and as volunteer.)

Cross Q. 80. When did you discharge him?

A. November 16, 1868, was the second time of his discharge, or near that date.

Cross Q. 81. But you just said he was discharged in 1870. When did you discharge him in 1870?

(Objected to because the witness has stated no time when he discharged him, except the date November 16, 1868, as the time of the second discharge.)

A. I thought the counsel for the defense asked me how many years Williamson had worked for me, and I tried to convey the idea from 1865 or 1866 to 1870, and that time he was refused further work on account of his leaving my business without cause or provocation. I did not make a record of it, but I was sick in bed at the time, and could find out the exact date because he came up into my room and there grossly insulted me while I lay there sick, and I ordered him out peremptorily, and he put his hand under his coat, making a feint as if he was going to pull a pistol out, and backed down-stairs so—he being drunk at the time.

(All after "date" objected to by counsel for defendant, as not responsive and as of a slanderous nature.)

Cross Q. 82. How long did Mr. Windley remain in your employ? Give the exact dates, or as near as you remember.

A. I think it was about March 25th, 1870, when he left, or a little before it; was a little before; I think he came in the summer of 1868.

Cross Q. 83. Did you discharge him in March, 1870?

A. I did not.

129 Cross Q. 84. When did you first know that he left you?

A. He came into my store-room, Broadway, Williamsburgh, and said he would like to go to work for Mr. Bachman or Watson, I am not positive which, being the firm then of Bachman & Watson, excusing his leaving, and saying he wanted to look after his daughter and children, and be where they were, or something to that effect.

Cross Q. 85. By what do you remember that this was before March 25th, 1870?

A. Because I set down and wrote this letter to Mr. Bachman, accusing him with being instrumental in taking one of my best hands away.

Cross Q. 86. Which letter?

A. This letter which I produce. I wrote this letter, but it was not delivered. I changed my mind a few days afterwards.

Cross Q. 87. How long had you been sick when you wrote that letter?

A. Not more than a day or two days, to the best of my knowledge. It might have been the same day I was sick.

Cross Q. 88. Do you know where—in what month—the hawthorn is in bud in England?

A. I think about the latter part of February.

Cross Q. 89. Have you ever seen it in bud at that season?

A. I think I have. The bud comes as soon or before the leaf does, or about the same time.

Cross Q. 90. Do the leaves come in England in the month of February?

A. I think the hawthorn is about the first, and the snow-drop and primrose are in February, too, and the crocus.

Cross Q. 91. Why did you not, when you found that your workmen

could not produce on your Leaver's lace-machine the net you described them in 1869, produce it yourself on such machine?

(Objected to as immaterial.)

A. I did not, and I could not, for two reasons: First, I was superintending my own factory, getting up my own goods and doing my
130 own selling, which occupied me from nine to eleven o'clock every night—from six in the morning till nine or eleven in the evening. The next reason is, my attention had been turned to building and inventing machinery, and not to draughting, that being a distinct business, and there are but a few in this country that understand a little of it.

Cross Q. 92. Did you read your application for a patent for your alleged new hair-net before signing it?

(Objected to as immaterial.)

A. I did; but got wrong yesterday through the word preliminary statement, not knowing for the moment to what preliminary statement you referred.

Cross Q. 93. Do you find that the description in your patent here in controversy agrees with the description of the application for a patent to which you signed your name and to which you appended your oath?

(Objected to, because it is not proper cross-examination, and also because no foundation has been laid for the question, and because the application or description, or a copy thereof, which the witness signed, and which was sent to the Patent-Office, has not been shown to the witness to enable him to compare the same with the description as it now stands in his patent, and therefore he has not had sufficient opportunity to compare the latter with the original description signed by him.)

A. That would be unanswerable by me unless I had the two together and classed them word by word, in order to arrive at any difference, if any there be.

Cross Q. 94. But you did not detect any gross or important variation between the patent as issued and the description you signed on reading your patent, did you?

A. Well, that I cannot recollect.

Cross-Q. 95. Have you ever seen a net composed of double strands, which pass through each other, that is to say, in which one double strand passes through the other double strand, as shown at the crossing of the coarse pillars where, I mark the same D, in Figure 2 of your patent, Exhibit A?

131 A. No net was ever made so; that is simply an error in describing the fabric; the fabric being perfect, but a slight error occurred in the description thereof.

And in answer to redirect examination the witness says as follows

R. D. Q. 96. Explain how the strands go through each other in your net.

(Objected to as immaterial.)

A. Both the thick and fine strands pass through the thick and fine pillars, but only one thread at a time entering through, and the other under, holding each other together by being twisted in the centre of the mesh.

R. D. Q. 97. Look at the preliminary statement, Exhibit 5, and state how you find the facts therein set forth to be as regards correctness or incorrectness, excepting two errors of dates of which you have spoken, and which relate to the date December 11, 1869, of leaving the sample

with Messrs. Van Santvoord and Hauff, and the date of March or April, 1871, of the arrival of the machine from England.

(Objected to as incompetent.)

A. I find them all I could wish, excepting the exceptions just spoken of.

R. D. Q. 98. When did you remove your factory from Williamsburgh to New York City?

A. In the fall—I might have said summer or fall—of 1871. My new factory in New York City was engaged in April, 1871, and my new machine put in and got to work before I removed the others, having two factories on my hands at the same time.

And in answer to recross examination the witness deposes and says as follows:

Recross Q. 99. In whose handwriting are the entries in the upper part of page 142 of the book containing Exhibits H and R?

132 A. I am not positive, sir, whether it is my daughter's or Mr. Noyes', my late partner.

J. DALTON.

Subscribed and sworn to before me this 17th day of June, 1873.

R. E. STILWELL,
Examiner, &c.

Adjourned to Friday, June 20, 1873, at 11 a. m.

NEW YORK, *Saturday, July 18th*, 1873.

Present: Counsel for both parties.

WILLIAM HAUFF, a witness called on behalf of the complainant, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Wm. Hauff; my age is 49; residence, 242 West Twenty-first street, New York; occupation, patent agent, of the firm of Van Santvoord & Hauff.

Q. 2. Did your firm act as attorneys for Mr. Dalton in his application for letters-patent Exhibit A?

A. Yes, sir.

Q. 3. Do you recollect when Mr. Dalton first made known this invention described in that patent, Exhibit A, to you or your firm? State your best recollection on that subject.

A. Mr. Dalton explained his invention to me in the summer or fall of 1869. He left at that time a sample of a net, by which he explained to me his invention.

Q. 4. What did you do with that sample?

A. I pinned the sample to a piece of paper on which I had written the explanation given to me by Mr. Dalton. Mr. Dalton stated to me at the time that he intended to file a caveat for his invention, and thought he would be back to the office in a few days; I then put the paper

133 with the sample in a drawer of my desk, in which I usually put samples of that kind; after some time, when Mr. Dalton did not return, I took the paper from my drawer, indorsed it with Mr. Dalton's name, and filed it away.

Q. 5. Look at the paper marked "Exhibit S," and state whether or not they are the paper and sample to which you have referred.

A. They are.

Q. 6. Point out thereon and mark with your initials the writing which you say you wrote thereon in the beginning of your answer 4.

A. I have marked it; the subsequent portion of the writing, also in my handwriting, I put on when Mr. Dalton came to make his application for a patent.

Q. 7. Please designate that subsequent portion of the writing with your initials, and the word and figure "number 2," and state the time, as near as you can recollect, when that subsequent portion was written thereon by you.

A. I have designated the same; that portion so designated was written in September, 1871.

Q. 8. Who wrote, if you know, the pencil-writing which is found below your writing, which you have just now marked "W. H., No. 2," and when was it written, and to what does it relate?

A. That portion of the writing is Mr. Dalton's, and it was put on by him with the view to give to me a full explanation of his invention. It was put on in my presence, but I do not recollect the time. It may have been put on when he first came in, or after.

Q. 9. Where has that sample, Exhibit S, been kept since Mr. Dalton gave it to you?

A. It was kept in the case where we keep our papers.

Q. 10. Under the name "Joseph Dalton," which is indorsed on the outside of the paper Exhibit S, is the date "Dec. 11, 1869." In whose handwriting is that date, and to what, if you know, does said date refer?

134 A. The date is in my handwriting, and it refers to the time when I filed the paper, Exhibit S, away, as before stated.

And in answer to cross-examination the witness deposes and says as follows:

Cross Q. 11. Were you one of the subscribing witnesses to the description filed with Mr. Dalton's application for the patent Exhib't A?

A. Yes, sir.

Cross Q. 12. Is the signature "Joseph Dalton," "per Van Santvoord & Hauff, attorneys," at the bottom of sheet 1 of the original drawing of Dalton's patent, and which sheet 1 of Exhibit A is a photograph, in your handwriting?

A. Yes, sir.

Cross Q. 13. Do you know the subscribing witnesses, Ernst Billhaber and C. Waklers, whose names appear on said sheet 1; and, if so, who are they, and where were they employed at the time said sheet 1 was signed by them?

A. I do know them, and they were then employed in our office at 41 Park Row, New York.

Cross Q. 14. Do you know H. T. Munson, whose name appears as a subscribing witness on sheet 2 of the patent Exhibit A?

A. I do.

Cross Q. 15. Who is he, and where was he employed, if you know, at the time the application of Mr. Dalton for his patent was pending?

A. He was at the time examiner in the Patent-Office in Washington.

Cross Q. 16. Was he the examiner who had to decide on Mr. Dalton's application, and whose name appears at the top of the last page but one of the certified copy of file-wrapper Exhibit 4?

A. Yes, sir.

Cross Q. 17. Do you know Parker H. Sweet, jr., the other subscribing witness to sheet 2 of patent, Exhibit A?

A. I do not.

135 Cross Q. 18. Do you know in whose handwriting the inventor's and attorney's signature on sheet 2 of patent Exhibit H is?

A. Yes; it is the handwriting of James L. Norris, of Washington, D. C., who holds a power of attorney to sign our firm's name in our cases before the Patent-Office.

Cross Q. 19. Can you explain why the drawing, sheet 1, was issued here in May, and the drawing, sheet 2, in Washington?

A. Before the case had been decided by the examiner, Mr. Dalton requested us to make an amendment; in order to explain this amendment an additional sheet of designs had to be made; this sheet was made in Washington.

Cross Q. 2. Can you relate what amendment that was of which you spoke in your last answer?

A. In the net represented on sheet 1, each mesh of the coarse thread is divided by the fine threads in four squares; in the net represented on sheet 2, each mesh of the coarse threads is divided by the fine threads in 9-16 or 25 squares; and in one, Figure 6, the fine threads run in an oblique direction to the coarse threads.

Cross Q. 21. When was that amendment prepared, if you know?

A. I do not recollect; the record will show.

Cross Q. 22. Can you state the month when Mr. Dalton first explained and showed the net Exhibit S?

A. It may have been in August, September, or October, 1869; I cannot state the exact month.

Cross Q. 23. Can you not remember when Mr. Dalton wrote the description contained in Exhibit S to you?

A. I cannot; it may have been when he first brought the sample, or it may have been when he came to make application for the patent.

Cross Q. 24. Why did you write the additional description on Exhibit S 2 in the year 1871?

A. I wrote that to sketch out the claim which I thought at the time could be obtained.

Cross Q. 25. If at that time, I mean in 1871, when you wrote the description W H No. 2, the description written by Mr. Dalton under yours, and which to a great extent appears to be a repetition of your writing, had already been there, it would have not been necessary for you to write the same matter again, would it?

A. The matter written by Mr. Dalton is not in the form to be represented in a claim for a patent, while in my writing I attempted to express the claim which I expected at the time could be obtained.

Cross Q. 26. Does the last line of your writing, W H No. 2, attempt to express a separate claim, or any claim, which you expected to obtain?

A. It is clear that it does not.

Cross Q. 27. Are you the same person whose name appears as notary public under the oath filed with J. Dalton's application for a patent, and of which a copy is contained in Exhibit 4, and wherein said Dalton swears that he is a citizen of Great Britain, and has declared his intention to become a citizen of the United States?

A. Yes, sir.

Cross Q. 28. In answer to question 9 you say that the sample, Exhibit S, has been kept in the case where you keep your papers since Mr. Dalton gave it to you. Was it always kept in that case since Mr. Dalton gave it to you?

A. I correct that answer to question 9, by adding to it the following words: where I filed it after I took it out of my drawer, referred to in my answer to question 4.

Cross Q. 29. Did you write your first writing on Exhibit S on the same day when Mr. Dalton first showed you the net Exhibit S?

A. Yes, sir. I wrote that when he was sitting at my desk—when he first came in with the sample.

137 Cross Q. 30. Can you not remember in what month you wrote it?

A. I cannot, as I stated before.

W. HAUFF.

Subscribed and sworn to before me this 1st day of July, 1873.

R. E. STILWELL,
Examiner, &c.

Adjourned to Wednesday, July 2, 1873, at 3 p. m.

Complainant's Exhibit S.—R. E. S., Examiner.

(Piece of net attached marked "Complainant's Exhibit S., R. E. S., examiner.")

Joseph Dalton.
Impt., 18 Broadway, Williamsburg, N. Y.
Caveat, hair-net, 59 & 61 Hudson street, N. Y.
Broad pillar, American Express building.
Small meshes inside of the large.

DOUBLE IMPROVED MESH NET.

The A net, composed of two sets of meshes, one set being fastened to the other set in the middle of the meshes' bars, each set at the same time being independent of the other, (if one is broken away the other will remain intact.)

Each mesh being rendered totally independent of the other mesh, one may be broken and the other mesh would still remain perfect.

138 The design of the independent small invisible mesh was to catch and press down the hairs well, are apt and independently inserted into and within a large coarse mesh was to catch and so prevent the hairs sticking through the large bars
(opposite page)
mesh, as well combining durability and beauty of design.

(Endorsed) Jos. Dalton, Dec. 11, 1869.

Complainant's Exhibit K.—R. E. S., Examiner.

THE U. S. PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a part of the model from the records of this office in the matter of the letters-patent granted Joseph Dalton; dated March 5, 1872, No. 124,340, for "hair-net."

In testimony whereof I, J. M. Thatcher, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and seventy-three, and of the independence of the United States the ninety-seventh.

[L. S.] J. M. THATCHER,
Acting Commissioner.

139 *Complainant's Exhibit Soar.*

VAN SANTVOORD & HAUFF'S PATENT AGENCY,
41 PARK ROW, (TIMES BUILDING,)
New York City, May 8, 1872.

To HENRY SOAR, *South* 11, *cor.* 1*st st., Brooklyn, E. D.:*

SIR: We are instructed by Mr. Joseph Dalton, to whom letters-patent of the United States, No. 124,340, were granted March 5, 1872, for an improvement in Ladies' Hair-Nets, to notify and warn you to cease forthwith infringing said patent; and you are requested to give him an account of the number of hair-nets made or sold by you in infringement of said patent, by the 13th day of May instant, and to compensate him for the damages he has suffered therefrom. If you disregard this notice suit will be brought against you.

Respectfully,

VAN SANTVOORD & HUFF.

Served copy of above on Henry Soar, May 8, 1872, p. m.
May 9, 1873.

J. A. S., *Exr.*

140 *Complainant's Exhibit U.—R. E. S., Examiner.*

DECEMBER, 19, 1871.

MR. DALTON:

DEAR SIR: In reply to your note of Novr. 16, I must first congratulate you on your success. I hope, after the trouble you have been at, it will well repay you. In reply about it having been made in Nottingham 2 years ago, it is simply an assertion that can't be substantiated. I have made inquiries, and can't find any one that has either seen or made anything of the sort. You must enquire what Robinson in Nottingham says, and then I will undertake to settle it; but I don't feel the least doubt about it. I don't think there is any one engaged in the hair-net trade that is capable of draughting the mesh you have. I feel sure you have a traitor in your camp. How did Jennings know you were going to apply for a patent? Look around you and you will find him out. I don't want to do Newbold any harm; but when he applied to me for a situation, he brought a bit of lace of a patent make from France with all the draw-threads in. That fact alone decided me not to set him on. Mind, I don't say it is him that has done you, but it seems so extraordinary for you to be petitioned against before you had got the goods in the market. In your next I shall not be surprised to hear you have found the traitor out.

Yours, truly,

F. N. BROOKSBANK.

Address: F. N. BROOKSBANK,
Gamble's Factory.

P. S.—I hope you have claimed for the bobbin-thread passing with the warp across thus , the bobbin-thread going from one pillar to the other, as marked in red ink.

F. N. B.

141 NEW YORK, *April* 2, 1872.

Mess. J. W. & K. Chisholm, bought of A. G. Jennings, No. 33 Howard street, near Broadway. Terms cash.

Berlin	X ¼ grs. silk nets, assd., @ 24		6
Duplex	X ½ " " " " " 33		16 50
180	X ½ " " " " " 27		13 50
			36 00

K. C.
Exhibit G.

R. E. S., *Examiner.*

142 United States circuit court, southern district of New York.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS. } In equity.

Testimony taken on part of defendants, under and in pursuance of the 67th rule of the Supreme Court of the United States, as amended.

TUESDAY, *April* 22, 1873.

Present: Arthur V. Briesen, esq., counsel for defendant; and J. Van Santvoord, esq., counsel for complainant.

(Defendant's counsel offers in evidence certified copy of designs, registered in the "Designs office" at London, England, on the 22nd of May, 1871, 26th July, 1871, and 1st of September, 1871, respectively, which are marked "Defendant's Exhibit No. 3, J. A. S., exr."

Also, certified copy of the file-wrapper and contents in the matter of the letters-patent granted Joseph Dalton, March 5, 1872, No. 124340, which is marked "Defendant's Exhibit 4, J. A. S., exr."

143 Also, certified copy of the preliminary statement of Joseph Dalton, in the matter of the interference of Dalton vs. Alexander, declared in 1871 for "reticular fabric," which is marked "Defendant's Exhibit 5, J. A. S., Exr.")

THOMAS HOOTON, being duly sworn as a witness on part of defendant, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. Thomas Hooton; age, 37 years old; residence, 160 Washington street, Brooklyn; occupation, lace-manufacturer.

2. Q. Are you acquainted with Abraham G. Jennings, defendant in this case; and, if so, how long have you known him?

A. I am acquainted with him, to the best of my knowledge, four or five years; I think about September, 1868, but I am not sure, but it was at the time Jennings bought out Reilly and Green; I was working for Reilly and Green at the time.

3. Q. Please examine the fabric marked "Defendant's Exhibit 2," and state whether you have seen it before, and, if so, when first in this country, and under what circumstances.

A. This is the same kind of net I made for Jennings, in Jersey City; I saw them before, but not to make them; I saw the same kind of net in the shop-windows before I worked for Jennings a long time.

4. Q. When did you first make it for Mr. Jennings?

A. I am not sure about the day, but it was two or three months after he commenced business in Jersey City.

5. Q. Do you know what year it was in?

A. I am not sure what year I commenced working for him.

6. Q. Was it before 1869, or after?

A. Before.

144 7. Q. On what kind of a machine did you make the fabric like defendant's Exhibit 2?

A. On a warp machine.

8. Q. Please examine the fabric marked "Complainant's Exhibit C," and state, if you know, on what machine that had been made.

A. On the Leaver's lace-machine.

9. Q. Please examine the net I now hand you, and state whether you made it, and, if so, how long since?

A. I made this net through the summer of 1871.

10. Q. Where did you make it?

A. At 29 Rose street, New York City.

(The net referred to is offered in evidence by defendant's counsel, and marked "Defendant's Exhibit 6, J. A. S., exr.")

11. Q. Can you state the month when you first commenced making the net marked Exhibit 6?

A. I think it was either June or July.

12. Q. What caused you to manufacture this net Exhibit 6, in 1871?

A. Business was slack, and my brother suggested that we make a net of this kind.

Cross-examined by J. Van Santvoord, esq., counsel for complainant:

13. Cross Q. What is the difference between a warp-machine and a Leaver's lace-machine?

A. A Leaver's lace-machine twists the threads together, and a warp-machine laces the threads together.

14. Cross Q. Is the fabric Exhibit 6 made with the same sized warp, or is there more than one sized warp in it?

145 (Objected to by defendant's counsel, unless counsel for complainant defines what he means by "warp" in a fabric of this kind.)

A. What we term the "warp" is all the same size.

15. Cross Q. How is it with the fabric Exhibit C; has that the same size warp-thread throughout, or is there more than one size of warp-thread in that?

(Objected to as immaterial.)

A. So far as I can judge, what we term the warp is the same size.

16. Cross Q. How about the warp in Exhibit E; has that more than one size of warp in it?

(Same objection.)

A. What I term the warp is the same size in that, as I suppose.

17. Cross Q. Point out the warp-thread in Exhibit E.

A. I separate the two strands of a fine thread in the exhibit; one is the warp and one is the bobbin.

18. Cross Q. You say you separate two strands of the fine thread in Exhibit E; do you mean the threads which compose the fine mesh between the thick pillars?

A. Yes.

19. Cross Q. Now, how about the coarse mesh composed of the thick pillars in Exhibit E; are they made with a different size warp from the other warp you have spoken of?

A. Much thicker.

20. Cross Q. Look again at the fabric, Exhibit C, and state if that does not also contain different sized warp-threads?

A. What we term the warp is the beam containing the most
146 threads; when there are other beams they are not usually called warps, but extra beams, and it is off the extra beams the thick thread comes in all these nets, in my opinion; I refer to Exhibits C, E, 2 and 6.

21. Cross Q. Then each of these Exhibits 2, 6, C, and E, have two beam-threads; is that your meaning?

A. Yes, sir.

22. Cross Q. How many bobbin-threads of different sizes have they?

(Objected to as calculated to mislead, unless the exhibits are separately referred to in the question.)

A. I suppose there is no more than one size of bobbin-threads.

X 23. Q. Are these beam-threads, which you say are two in number, in each of these Exhibits 2, 6, C, and E, of different sizes in the respective exhibits?

(Objected to, as indefinite.)

A. Yes, I suppose they are.

X 24. Q. What distinguishes the bobbin-thread from the warp, in a machine for making such fabrics, in respect to the mode of working or arrangement?

(Objected to, as calculated to mislead.)

A. The bobbin-threads are wound separately on what we term bobbins or shuttles, and the warp-threads have sufficient number of threads put on one beam to extend across the machine.

25. Cross Q. Are not the warp-threads always wound on beams, on such machines?

A. There are some kinds of nets made off spools, without the warp; there are some made without the warp at all.

26. Cross Q. When threads are wound on beams, are they not always known as warp?

A. They are.

147 27. Cross Q. When spools are used in place of the beams, are not spool-threads warp?

A. They answer in place of a warp.

28. Cross Q. Did you make any nets for Jennings like Exhibit C?

A. No.

29. Cross Q. What is the difference between Exhibit C and Exhibit 6?

A. One difference is, there are four small holes inside the heavy mesh of Exhibit C, and there are nine small holes inside the heavy mesh in Exhibit 6.

30. Cross Q. By what means are you able to swear that you made Exhibit 6?

A. I can find the men that made it, and the men that bought it, and I still have the cards and machine in my shop.

31. Cross Q. Did you make or prepare the cards?

A. No; my brother always did that.

32. Cross Q. If you made Exhibit 6, state whether or not you employed beam-threads of different sizes; and, if so, how many different beams and how many different sizes of beam-threads in making it?

A. Two sizes of threads; the warp and extra beam.

33. Cross Q. How many sizes of bobbin-threads did you use in making Exhibit 6?

A. All the same size.

34. Cross Q. How many sized bobbin-threads do you find in the fabric, Exhibit C?

A. One size, I suppose.

35. Cross Q. Do you work now for Mr. Jennings?

A. No.

36. Cross Q. How long since you worked for him?

A. Between two and three years.

THOS. HOOTON.

Subscribed and sworn to before me this 22d day of April, 1873.

JOHN A. SHIELDS,
Examiner, etc.

148 GEORGE OSBORNE, being duly sworn as a witness on part of defendant, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. George Osborne; age, 51 years old; residence, 48 Underhill avenue, Brooklyn; occupation, lacemaker.

2. Q. Where are you working as lacemaker?

A. At Mr. Abraham G. Jennings', in Brooklyn.

3. Q. How long have you been with Mr. A. G. Jennings?

A. From about the middle of June, 1868.

4. Q. Please look at the fabric marked "Exhibit 2," and state whether you have seen fabrics of that construction before; and, if so, when first and where.

A. I saw it in 1868, in Mr. Jennings' office; he had it for sale then—similar to this.

5. Q. Was the fabric you saw at Mr. Jennings' office in 1868 made with coarse and fine threads like Exhibit 2 or with threads of the same or equal thickness?

(Objected to as leading.)

A. It was made with a fine warp-thread, and an extra beam for figuring it with fine thread.

6. Q. Question repeated.

(Same objection.)

A. The body was made of fine threads and the figure with thick, on an extra beam.

7. Q. Please look at the net I now show you and state whether you saw a fabric of that description before; and, if so, when first, and where.

A. I saw this or a similar one before; it must have been in June, 1871, in Brooklyn; it was made in Furman street, by either Walter or John Dexter.

(The net above referred to is put in evidence, and marked "Defendant's exhibit 7, J. A. S., exr.")

149 8. Q. Please look at the net I now hand you, and state if you ever saw a fabric of that description before; and, if so, when first, and where.

A. I saw it about the same time and the same place I saw Exhibit 7.

(The net referred to is offered in evidence and marked "Defendant's exhibit 8, J. A. S., exr.")

9. Q. Was Mr. Dexter, when you saw these nets in Furman street, Brooklyn, in 1871, in business for himself; and, if not, in whose employ was he?

A. He was in Mr. Jennings' employ.

10. Q. Please examine the net marked "Complainant's exhibit C," and state whether you saw a fabric of that description before; and, if so, when first, and where.

A. The first time I saw it, I believe, was in the commencement of 1872, made in a piece; but I made a sample myself in the fall of 1869, with thick and thin thread, and black and white thread, from a design Mr. Jennings had sent from England.

11. Q. Please describe the design Mr. Jennings had sent from England.

A. The design was a thick light-colored mark and a black fine one crossing, to make the figure or form the design.

12. Q. Please look at the paper I now hand you, and state whether you have seen that identical paper before; and, if so, where and when first, and describe what it represents.

A. I saw it about the middle of July, 1869. It represents, according to the draught, making a net with a thick thread and a fine one, or a colored one and a white one. I saw it in 49 Barclay street, Mr. A. G. Jennings' place of business.

150 (The card referred to is put in evidence, and marked "Defendant's exhibit 9, J. A. S., exr.")

13. Q. In whose possession was this card, Exhibit 9, when you first saw it?

A. Mr. Jennings came to me and opened a letter, and said to me, "I got a design here from England." He didn't discern these fine marks, and I said, "This is a new design"—something different from what we were at that time making.

14. Q. What occurred after that with reference to this design?

A. There was nothing more said at that time—not for awhile—and about October or November, 1869, I was making different patterns, and I made that from that design.

15. Q. Can you describe the object of the figures and undulating lines upon one side of the card, Exhibit 9?

A. That I don't exactly understand; but I can make the work, but not from this draught; this is a draught for a Leaver's bobbin net machine; I can make it on a warp lace-machine—the design, the same loops, insteads of twists.

16. Q. What kind of a machine did you make the first sample on of the net which is represented on the card, Exhibit 9?

A. On a warp lace-machine.

17. Q. Did you have to change the Jacquard attachment to such machine in order to produce the new design?

A. On a warp-machine it is the same as the old—I mean the ordinary nets—with the exception of traversing to another pillar—crossing at one pillar more.

18. Q. Is the net I now hand you of the style you call the ordinary net in your last answer?

A. Yes.

151 (The net referred to is offered in evidence, and marked "Defendant's exhibit 10, J. A. S., exr.")

19. Q. How long have you known nets like Exhibit 10?

A. I made the same in 1863, in black, in Washington street, Lafayette, Jersey City.

Cross-examined:

20. Cross Q. How many bars are used in making nets like Exhibit 10?

A. Two bars.

21. Cross Q. How many bars are required in making the net Exhibit C on the warp-machine?

A. Two.

22. Cross Q. Then the same number of bars is required for each?

A. Yes.

23. Cross Q. Are there not two sets of warp-threads, or beam-threads, used in making Exhibit C?

A. Yes, sir; one thick and one fine.

24. Cross Q. Now, in making such a net as Exhibit C on a warp lace-machine, with the number of beam-threads, or warp-threads, mentioned in your last answer, do you not use more than two bars?

A. No.

25. Cross Q. When you first saw the paper, Exhibit 9, did you make any mark on it by which you could identify it again?

A. I had the impression when I first saw it that it was a new design, and it is so long since I saw it, that the light-colored marks were the heaviest.

26. Cross Q. Question repeated.

A. I didn't make any mark on it; I only had it in my hand.

27. Cross Q. How, then, do you know now that it is the same paper?

152 A. I have nothing further to go by than I had it in my hand, and I judge so from the paper; I did not mark it in any way to identify it.

28. Cross Q. By what circumstance or event, if any, do you tell the time you first saw this paper, Exhibit 9?

A. Well, the fall of 1869 I made a good many patterns, and since then I have not made any patterns.

29. Cross Q. How long before you made such pattern in the fall of 1869 was it you first saw this paper, Exhibit 9?

A. It was about in the middle of July; it was hot weather at the time, and Mr. Jennings had a machine come from England.

30. Cross Q. Question repeated.

A. Three or four months.

31. Cross Q. To what machine do you refer Mr. Jennings got?

A. It was a Leaver bobbin-net or lace machine.

32. Cross Q. Did he get more than one machine that year of that kind?

A. I wouldn't be exactly certain about that.

33. Cross Q. Do you know who he got it from or where it came from?

A. It came from Matthew Robinson, Nottingham, England.

34. Cross Q. How many Leaver's lace-machines has Mr. Jennings now?

A. Twenty or more.

35. Cross Q. How many did he have when you went to work for him in 1868?

A. He had four bobbin lace-machines and four warp lace-machines.

36. Cross Q. Do you know who wrote the name "Matthew Robinson" on Exhibit 9?

A. I don't know.

37. Cross Q. Was that name on Exhibit 9 when you first saw it?

A. I don't know.

153 38. Cross Q. Did you make the cards for the Jacquard machine for this work, or sample like the design, Exhibit 9, which sample you say you made in the fall of 1869?

A. I didn't use any cards.

39. Cross Q. How, then, did you make the sample?

A. We have a chain which operates like a cam to raise and fall the beams like a Jacquard.

40. Cross Q. How large a sample did you produce then?

A. As near as I can recollect, about four inches broad and about nine or ten inches long.

41. Cross Q. How came you to make that sample?

A. I thought about the design, and I tried to make it.

42. Cross Q. Did you show it to Mr. Jennings?

A. Yes.

43. Cross Q. What did he say?

A. He took it and looked at it, but didn't say anything.

44. Cross Q. When next was any such work made in Mr. Jennings' place or for him?

A. I couldn't say; either the latter end of 1870 or beginning of 1871.

45. Cross Q. On what kind of a machine was it then made?

A. On Leaver's bobbin-net machine.

46. Cross Q. Was that machine got up especially for this work?

A. No, sir.

47. Cross Q. Was it operated in connection with the Jacquard apparatus?

A. Yes.

48. Cross Q. Who got up the patterns?

A. Henry Brentnal, who worked for Mr. Jennings at that time, but is now in Europe.

49. Cross Q. Do you know when this work, Exhibit C, was first made in Mr. Jennings' place?

A. This looks like the kind of work Henry Brentnal made when he put the pattern on.

154 50 Cross Q. Do you know a man of the name of George Alexander?

(Objected to, as not being cross-examination.)

A. No.

51. Cross Q. Are you from Nottingham, England?

A. I am; Isan Green, a suburb of Nottingham.

52. Cross Q. Do you know Henry Coombs, of Nottingham?

(Same objection as to Cross Q. 50.)

A. No, sir.

53. Cross Q. Or Thomas Coombs, of this country?

(Same objection.)

A. No, sir.

54. Cross Q. Look at Exhibit 2, and state whether it has more than one size of warp-threads.

A. The warp is all of one size; an extra beam for the figuring is thicker.

GEORGE OSBORNE.

Subscribed and sworn to before me this 22d day of April, 1873.

JOHN A. SHIELDS,
Examiner, etc.

Adjourned to 23rd inst., at 11 a. m.

WEDNESDAY, *April 23d*, 1873.

Present: Counsel as before.

THOMAS HALL, being duly sworn as a witness on part of defendant, deposes and says:

155 1. Q. What is your name, age, residence, and occupation?

A. Thomas Hall; age, 45 years old; residence, Jersey City; occupation, hair-net manufacturer.

2. Q. Are you acquainted with A. G. Jennings, defendant in this case; and, if so, how long have you known him?

A. I am acquainted with him; I have known him six years next September.

3. Q. Were you employed in his business during the years 1867 and 1868; and, if so, in what capacity?

A. I was, as a worker or lacer on one of his machines—a twist-lace machine.

4. Q. Please look at defendant's exhibit 2, and state whether you have seen a fabric of that construction before; and, if so, when first, and where.

A. I have seen that before; first in December, 1867, in Steuben street, Jersey City.

5. Q. At whose establishment did you see it at that time?

A. A. G. Jennings'.

6. Q. Did you see it while under process of construction, or only after it was finished?

A. I saw it in both.

7. Q. Who made it?

A. The workmen were Thomas Hooton and Elijah West, in Steuben street, and they worked for Mr. A. G. Jennings.

8. Q. Please look at the fabric I now hand you, and state whether you have seen fabrics of that construction before; and, if so, when first, and where.

A. Well, I think I have seen a similar fabric, commonly styled mosquito netting, in 1867, at my house.

(This fabric is put in evidence by defendant's counsel, and marked "Defendant's exhibit 11, J. A. S., exr.")

156 9. Q. Please describe the fabric which you saw at your house, in 1867, as stated in your last answer.

A. It would be a similar fabric to this, Exhibit 11, but I am not certain whether there were thick threads in or not.

10. Q. Question repeated.

A. It was a similar fabric to this, Exhibit 11.

11. Q. In what respect is it similar to Exhibit 11?

A. The mesh is similar, and that's all I can say to that.

Cross-examined by J. Van Santvoord, esq., counsel for complainant:

12. Cross Q. By what process is the fabric, Exhibit 11, produced?

(Objected to as immaterial and not cross-examination.)

A. I presume it is made from a beam; from what I can see I should call it ordinary weaving.

13. Cross Q. You say that you saw fabrics like Exhibit 2 in process of construction in December, 1867; how many threads were employed in its construction—I mean different kinds of threads, including bobbin and warp or beam?

A. That I can't tell, unless I knew the exact width of the machine. There were no bobbins; beams and warp there were.

14. Cross Q. What kind of a machine was used?

A. A lace warp-machine.

15. Cross Q. How many different beams or warps were employed in making said fabric?

A. I believe there were four; I think so.

16. Cross Q. How many different sizes of threads?

A. There were but two.

17. Cross Q. What part of the fabric was the thicker thread employed for?

A. For the spot.

157 18. Cross Q. Who do you work for now?

A. I am in business for myself.

Redirect:

19. Q. Do you find on Exhibit 2 that the thicker thread is only in the spots? And, if not, describe where else you see it on such exhibit.

A. I see it run down from one spot to the other.

THOMAS HALL.

Subscribed and sworn to before me this 23d day of April, 1873.

JOHN A. SHIELDS,
Examiner, etc.

HENRY WILLIAMSON, being duly sworn as a witness on part of defendant, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. Henry Williamson; age, 52 years old; residence, 82 Wythe avenue, Brooklyn, E. D.; occupation, lace-manufacturer.

2. Q. Where were you in business in the year 1869?

A. I was working journey-work for Mr. Dalton in 1869, I believe, on Broadway, Brooklyn, E. D.

3. Q. When did you enter Mr. Dalton's employ, and when did you leave it?

A. I believe it is five years ago next May when I entered his employ; I left his employ some time in June or July, 1869; I don't know which month.

4. Q. Please look at the fabric which I now hand you, and state whether you saw it before; if so, where and when.

158 A. I bought this fabric four years ago this spring, in Williamsburg, on Broadway.

(The fabric is put in evidence, and marked "Defendant's Exhibit 12, J. A. S., EXR.")

5. Q. What did you do with it after you bought it, and who did you show it to?

A. I didn't do anything with it; I bought it merely for a design; I showed it to John Windley and Mr. and Mrs. Dalton.

6. Q. Is the Mr. Dalton you refer to in the last answer, and also in answer to questions 2 and 3, the complainant in this case, Joseph Dalton?

A. Yes.

7. Q. Please state what Mr. Dalton said to you when he saw that fabric, Exhibit 12.

A. It is so long since, I don't recollect.

8. Q. Did Mr. Dalton employ you to make for him a sample of a hair-net similar to that represented on the drawings of his patent, Exhibit A?

A. No, sir.

9. Q. Did Mr. Dalton describe and explain to you, in or about July, 1869, the net represented in the drawings of the patent, Exhibit A, and did he instruct you then to go on and try to produce the new net?

A. No.

10. Q. Did you at any time try to produce the new net represented on the drawings of that patent, Exhibit A?

A. No; but once tried to produce Exhibit 12.

11. Q. When did you try to produce a net like Exhibit 12, and who for?

A. I believe it was four years ago this spring; it is four years since I bought it, and I think that is the time, for Mr. Dalton.

12. Q. Did he instruct you to produce it, or to try and produce it?

159 A. No, sir; he said he wanted something afresh, and I bought this for a sample.

13. Q. Why, then, if he did not instruct you, did you try to produce the net like Exhibit 12?

A. Well, it was this: there was no work doing, and I tried to produce it to make work.

14. Q. Did you try it on your own responsibility, or under anybody's instructions or orders?

A. I tried it on my own responsibility.

15. Q. Did you succeed in producing a net like Exhibit 12 at the time you tried?

A. No.

16. Q. On what kind of a machine did you try to produce that net?

A. A Leaver lace-machine.

17. Q. Was Mr. Dalton present when you so tried to produce it?

A. Part of the time.

18. Q. Did he approve of your experiments?

A. No, sir; he took us right off of it, and to go on with the old goods.

19. Q. Who do you mean by "us" in your last answer?

A. John Windley and myself.

20. Q. Was Mr. John Windley aiding you in trying to produce a net like Exhibit 12?

A. Yes.

21. Q. Was he so doing under the instructions of Mr. Dalton, so far as you know?

A. Not that I know of; we were doing it on our own account, to find work; we got nothing for it, so it was on our own account.

22. Q. Were you not paid by Mr. Dalton while you were in his employ?

A. Not for that.

23. Q. Please compare figure 6 of the drawing in complainant's patent, Exhibit A, with Exhibit 12, and please state what difference, if any, you find between the two.

160 A. The design is the same; one is machine-made, and the other is hand made.

24. Q. Which is machine-made, and which is hand-made?

A. Figure 6 is machine-made, and Exhibit 12 is hand-made.

25. Q. From what do you infer that the design, figure 6, in the patent, Exhibit A, is machine-made?

A. It has every appearance of being twist-lace.

26. Q. How are the strands of Exhibit 12 united at the ties or corners?

A. They are tied.

27. Q. You say you bought Exhibit 12 in Broadway, Brooklyn, E. D., in the spring of 1869; by what was your attention directed to it?

A. By wanting something new; a new sample of goods.

28. Q. How did you happen to find that net, Exhibit 12?

A. I saw it in the window exposed for sale.

29. Q. What kind of a store was it that you bought this Exhibit 12 in?

A. A small-ware store I should call it, where they sell children's goods and ladies' ware.

30. Q. Is this piece, Exhibit 12, all of what you then bought; and, if not, how much did you buy, and what became of the rest?

A. This is not all; I cut it in half, and sold half to John Windley.

31. Q. Is this half, then, of what you bought?

A. It is not half, it is a part of it; it was what I call a small tidy.

32. Q. Did you, while buying this net or tidy, Exhibit 12, see only the one you bought, or were more than one shown you?

A. More.

33. Q. Were they of different construction to Exhibit 12?

161 A. Some same, some different—different kinds.

34. Q. In the statement filed by Joseph Dalton, in the United States Patent-Office, he swears that about July 15, 1869, he described and explained to you and to John Windley his invention, which is the same represented in the patent Exhibit A, that he instructed you and Windley to go and try and produce the new net on his, Dalton's, twist or lace machine; that you tried and did not succeed; state whether you remember such fact.

A. No.

35. Q. Would you remember this fact, if true?

A. Yes.

36. Q. Dalton, in the same statement, also swears that you left his employ about June, 1870; does that agree with your recollection?

A. I do not recollect what month I left, but it was somewhere about then.

37. Q. In answer to question 3 you state you left Mr. Dalton's employ in June or July, 1869, while in the last answer you say it was in 1870; which of the two dates is correct?

A. It is three years ago this summer.

38. Q. Please look at the net or fabric marked "Defendant's Exhibit 11," and state whether or not you have seen such fabric before, and if so, how long ago, as near as you can remember?

A. No; I have not seen it before.

Cross-examined by J. Van Santvoord, esq., counsel for complainant.

39. Cross Q. Whose store was it, or what number in the street where you bought Exhibit 12?

A. I can't tell you; I don't know the name or the number.

40. Cross Q. Between what streets was it?

A. It was between 4th and 6th.

41. Cross Q. On which side of Broadway?

162 A. It was on the right-hand side going from the ferry.

42. Cross Q. Was it a corner store?

A. No.

43. Cross Q. Was it kept by a lady or a man?

A. I can't tell; it was a lady that served me; that's all I know.

44. Cross Q. How much did you pay for what you bought?

A. I couldn't say positively, but I believe it was about thirty cents I paid for it.

45. Cross Q. Was the article a hair-net, or what was it you bought?

A. It was a tidy.

46. Cross Q. Did you buy any other at that time?

A. No.

47. Cross Q. Did you see other designs there, at that store, of tidies?

A. Yes; quite a number.

48. Cross Q. Why did you only take this?

A. Bought it for the express purpose of a design to make into hair-nets.

49. Cross Q. Were you not then an employed man, working for Mr. Dalton?

A. Yes, when there was work.

50. Cross Q. Was there any time in 1869 when there wasn't any work for you in Mr. Dalton's factory?

A. Yes, some days there was no work.

51. Cross Q. Was the work slack the summer of 1869, or otherwise?

A. I believe it was slack in the spring of 1869; I can't tell you if the work was slack in the summer of 1869; I don't recollect; it is too long since.

52. Cross Q. Did you lose any time at all in 1869 because Mr. Dalton had no work for you?

A I don't recollect.

163 53. Cross Q. Then, if you don't recollect that, why did you, in answer to cross q. 49, say that you worked for Mr. Dalton when there was work?

A. Some days we had no work.

54. Cross Q. In what month of 1869 was that time?

A. I can't tell you the month.

55. Cross Q. Was it true at the time you bought Exhibit 12?

A. It was. We were making no work at that time.

56. Cross Q. In what month and in what year did you buy Exhibit 12?

A. I believe it was four years ago; I don't recollect the month.

57. Cross Q. In what year was it?

A. 1869.

58. Cross Q. By what circumstance or event are you able to say that it was in the year 1869? State particularly such circumstance or event, if any.

A. I believe trade was a little slack at that time.

59. Cross Q. Is that the only circumstance or event which enables you to fix 1869 as the exact year when you bought Exhibit 12?

A. Yes.

60. What do you mean when you say trade was a little slack at that time?

A. There wasn't sufficient work to work all the time.

61. Cross Q. Then you mean Mr. Dalton's trade, do you, and your supply of work in his factory?

A. Yes.

62. Cross Q. Was it warm weather or cold weather when you bought Exhibit 12?

A. I can't tell you.

63. Cross Q. Was it after you had quit work for the day when you bought that?

A. I don't believe I was working that day.

64. Cross Q. Did you, during the year 1869, lose any time voluntarily?

A. Yes, I did.

164 65. Cross Q. Why?

A. I lost the time on my own account.

66. Cross Q. Did Mr. Dalton have work for you when you lost such time on your own account?

A. Sometimes.

67. Cross Q. Did he not remonstrate with you for losing time, for quitting work or staying away from work, during the year 1869 or 1870?

(Objected to as immaterial.)

A. Yes.

68. Cross Q. Did he not also, in 1869, discharge you for misconduct, or what he considered misconduct?

(Same objection.)

A. No.

69. Cross Q. Will you swear positively that it was 1870 when you finally ceased to work for Mr. Dalton?

A. Yes.

70. Cross Q. In what month?

A. I don't know.

71. Cross Q. What was the occasion of your leaving him then?

(Objected to as immaterial.)

A. He wanted to abate the other man's wages who was working on another machine, and the society took me out of his employ along with other men. I was not discharged, and I didn't leave only under these circumstances. This man's name was Sharp.

72. Cross Q. What society do you refer to, and who was president of it then?

(Same objection.)

165 A. The Lace-Makers' Society; but I don't know who was president of it at that time.

73. Cross Q. Were you not, previous to this, discharged by Mr. Dalton several times?

(Same objection.)

A. No.

74. Cross Q. How soon after you bought Exhibit 12 was it that you tried to produce a net of the design of Exhibit 12?

A. The same time.

75. Cross Q. How long after you bought did you give a piece to Mr. Windley?

A. At the time I bought it.

76. Cross Q. What did you tell him concerning it?

A. I didn't tell him anything concerning it.

77. Cross Q. Did you not have any conversation with him about it?

A. No more than general conversation. We thought it would be something new, and would answer the purpose if we could do it.

78. Cross Q. What purpose?

A. For making into nets.

79. Cross Q. In what respect would it have been new?

A. It would have been new in nets to work a thick and thin thread; it is common to work thick and thin threads in lace.

80. Cross Q. Did you try to produce such a net at that time?

A. Yes, me and Windley were trying it.

81. Cross Q. What did you do? Describe what you and Windley did.

A. We was trying to put it on, and Mr. Dalton came and took us off of it, and to go on the old class of goods, before we got finished.

82. Cross Q. Tell what you did, or tried to do, on the machine, if that is what you mean.

166 A. We were trying to imitate that net, and Mr. Dalton came and took us off.

83. Cross Q. Did you try to do anything with the bars or the Jacquard or the cards, in your trial?

A. Yes, we altered the cards. We put two extra bars in.

84. Cross Q. Did you succeed in your trial? If not, why not?

(Objected to as already answered.)

A. We did not succeed, because Mr. Dalton came and took us away.

85. Cross Q. Who set you to work making the trial?
A. We worked on our own account.
86. Cross Q. Did not Mr. Dalton request you and Mr. Windley to change the machine, to make this new net, or request you to get out such net on your machine?
A. He said he wanted something new.
87. Cross Q. Then it was Mr. Dalton who started you and Mr. Windley to make that trial, was it not?
A. Mr. Dalton said he wanted something new, but he didn't describe anything definite.
88. Cross Q. State what he said he wanted.
A. I don't recollect.
89. Cross Q. What did he say that he wanted new—what article?
A. A new head-net.
90. Cross Q. Did he show you or Mr. Windley anything to go by?
A. He didn't show me anything.
91. Cross Q. What, then; were you trying to make for him—what kind of a mesh?
A. A loop-net.
92. Cross Q. Do lace-makers make loop-nets on a Leaver's machine?
A. Yes.
167 93. Cross Q. Recall to your mind this trial you made, and state how many different sizes of threads you used in your trial, besides the bobbin threads.
A. Two.
94. Cross Q. How long a time did you and Mr. Windley spend on that trial?
A. I can't say exactly. It was either one or two days, I can't say which. It might have been a half a day.
95. Cross Q. Will you swear that Mr. Dalton did not pay you and Mr. Windley for that time you spent in trying to produce that new net on your machine?
A. He didn't pay me.
96. Cross Q. Did he not pay you $1.50 for that work?
A. I think not.

Adjourned to 24th instant, at 11 a. m.

168 Circuit court of the United States for the southern district of New York.

DALTON
vs.
JENNINGS.

NEW YORK, *April* 24, 1873.

Present: Counsel as before.

And the cross-examination of HENRY WILLIAMSON being resumed, he further says:

97. Cross Q. Hear the officer read 96 cross-q. and the answer thereto, and state how much you think Mr. Dalton did pay you, if anything, for that extra work in trying to produce the new head-net on the Leaver's lace-machine.
A. I don't remember that he paid me anything.
98. Cross Q. Did you ask him to pay you anything for that work, or speak to him on the subject of being paid therefor?
(Objected to as immaterial.)
A. I don't remember that I did.

99. Cross Q. What kind of work was you making at the time that you tried to produce the new net, as you say, and on what machine?

169 A. I was making silk head-nets on the Leaver's lace-machine.

100. Cross Q. And Windley was working along with you on that machine. Was that so?

A. No.

101. Cross Q. Who was?

A. Working the machine myself; there wasn't two to work it.

102. Cross Q. State how Mr. Dalton paid you for the work you have just mentioned, making silk head-nets.

A. I was paid by the piece; so much a rack.

103. Cross Q. How was you paid when you did extra work for him, or job-work of any description, such as milling, beaming, or other jobs?

A. Paid by the day.

104. Cross Q. How much a day?

A. Well, I don't recollect exactly, but I believe it was two dollars and a half.

105. Cross Q. Who fixed the price per rack?

A. The trade-society fixed the price.

106. Cross Q. Where have you kept Exhibit 12 since you bought it?

A. Kept it in my house.

107. Cross Q. Have you any other piece or pieces of the tidy you bought beside Exhibit 12?

A. No.

108. Cross Q. What did you do with the rest of it?

A. John Windley had half of it.

109. Cross Q. Is Exhibit 12 the other half?

A. It is part of it. It is not half.

110. Cross Q. Where is the rest of your half?

A. I guess it is chucked away; done away with.

111. Cross Q. Can you remember whether it was before the fourth of July or after the fourth of July, 1869, when you showed that piece to Windley?

A. I believe it was before.

112. Cross Q. What makes you believe that?

170 A. Oh, I have no particular reason, but I think it was before.

113. Where did you live then?

A. Williamsburg. I believe it is—I don't know whether it was 178 or 278 Broadway, between Seventh and Eighth streets.

114. Cross Q. Where was Mr. Dalton's factory then?

A. I think it was No. 15 Broadway.

115. Cross Q. Look at the sketch on the inside of the back cover of the account-book I now hand you, consisting of three squares alongside of each other, each bisected horizontally and vertically by a fine line, and state if you saw that in Mr. Dalton's factory about the time you tried to make the new head-net, as you have stated?

A. No.

116. Cross Q. Did not Mr. Dalton show that to you?

A. No.

117. Cross Q. What do you call the sketch—what does it represent?

A. I call it a design.

118. Cross Q. Did not Mr. Dalton show you such a design as that on a piece of paper at the time you tried to make that new head-net, you being at the time near your machine on which you was working, in the summer of 1869?

A. No.

(Counsel for complainant offers in evidence the design on the inside of the book-cover, to which the attention of witness has been asked, said cover being the cover of an account-book contained within said cover, and the same is marked "Exhibit H;" and requests counsel for defendant to observe that the lines, or some of them, composing said design, seem to be in lead-pencil, and it is therefore necessary to
171 use this exhibit with care, less some of the marks be rubbed out.)

119. Cross Q. What was done with the goods or work you and Windley, or you, produced in trying to make the new head-net?

A. Well, it was thrown away. We didn't produce any but small quantities, and it was thrown away.

120. Cross Q. What else did you show Mr. and Mrs. Dalton at the time you showed them this Exhibit 12?

A. Nothing else that I know of.

121. Cross Q. Where was it that you showed them Exhibit 12?

A. I showed it to Mr. Dalton in the shop, and to Mrs. Dalton at my house.

122. Cross Q. Mention the date of each of those occasions.

A. I don't remember the date.

123. Cross Q. Mention the year.

A. I believe it was 1869.

124. Cross Q. How long after you got Exhibit 12 was it did you show Mr. Dalton and also Mrs. Dalton the same?

A. Well, I don't remember when it was after; some time after.

125. Cross Q. Whom did you show it to first, Mr. or Mrs. Dalton?

A. I don't remember which.

126. Cross Q. Was it not in 1870 that you showed Exhibit 12 to them?

A. I don't remember whether it was 1869 or 1870. I believe it was 1869.

127. Cross Q. Do you recollect whether Mr. Dalton went to England in 1869, after you tried to make the new head net?

A. I don't remember.

128. Cross Q. Did he go in 1870?

A. I don't know.

172 129. Cross Q. Did you accompany him over to a steamer on which he sailed for England?

A. Yes.

130. Cross Q. When was that; in what steamer?

A. I don't remember the time nor the name of the steamer.

131. Cross Q. Do you recollect of taking samples of lace to Mr. Dalton's house in the latter part of 1869 or the first part of 1870, and exhibiting them there to Mr. Dalton's family, or to Mrs. Dalton?

A. Yes, some patterns I made myself.

132. Cross Q. Who was present then?

A. I believe Mr. and Mrs. Dalton were both present at that time; I don't recollect anybody else.

133. Cross Q. How many patterns did you then show them? and describe them.

A. I don't recollect whether there was one or two patterns now; it was crotched lace.

134. Cross Q. What was the peculiarity of that?

A. There was no peculiarity in it; it was made for a sample.

135. Cross Q. What was your object in showing it?

A. I got a patent out for knitting or crocheting lace; I got a patent out for improvement on the machine, and it was made for samples.

136. Cross Q. What is the number and date of the patent?

A. I don't know the number; but I believe it was in October, 1871.

137. Cross Q. Was it before or after you got the patent that you took the sample?

(Objected to as immaterial.)

A. Before; perhaps six months, perhaps twelve months before; I can't tell how long.

173 138. Cross Q. Did you then, when you made those samples, have any machine of your own to make them on?

(Same objection.)

A. Yes; I had to build a model to make the samples on before I could get the patent out.

139. Cross Q. Where was you employed then?

(Same objection.)

A. When I made the samples I worked for Mr. Dalton.

140. Cross Q. What did you make the samples upon, a model or a full-sized machine?

A. A model.

141. Cross Q. What did you do with the model?

A. I have got it.

142. Cross Q. Was there a Jacquard attached to it?

A. A Jacquard apparatus was attached to it.

143. Cross Q. State how large that model is, give the dimensions; and who built it?

A. It will make four-inch-wide lace, and I built it myself.

144. Cross Q. State when you built it, and when you completed it?

A. Well, it took me considerable time to complete it, a year or two; it was completed in 1870, I think.

145. Cross Q. Where did you build it, and at what place?

A. In my house.

146. Cross Q. What kind of lace was this sample? describe it.

A. Crotched lace.

147. Cross Q. Was it like any of the exhibits here, C, E, 2, 6, 7, 8, 12, 11?

A. It was made in the same style as Exhibit 2, but of a different mesh, one size of thread.

174 And in answer to redirect examination, the witness says as follows:

148. Redirect Q. In answer to cross-q. 99, in stating that you were making silk head-nets on the Leaver's lace-machine, did you refer to the work you made before or after your trial to imitate the net Exhibit 12? Please hear the examiner read the question 99 and answer, before replying.

A. Both before and after.

149. Redirect Q. Where did you show the net Exhibit 12 to Mr. Windley?

A. In Mr. Dalton's shop.

150. Redirect Q. Do you remember how much time elapsed between your buying that tidy and your showing it to Mr. Windley?

A. I showed it to Mr. Windley at the time I bought it.

151. Redirect Q. Was he with you when you bought it?

A. No.

152. Redirect Q. Where did you go with that tidy immediately after you bought it?

A. I don't remember whether I went home or whether I went to the shop.

153. Redirect Q. Did you show it to Mr. Windley when you first went to the shop after having bought it?

A. Yes.

154. Redirect Q. Do you remember whether that was the same day or the next day?

A. I don't remember when it was.

155. Redirect Q. Do you remember whether many days elapsed between your buying that tidy and your showing it to Mr. Windley?

A. I think not.

156. Redirect Q. Were you alone when you bought that tidy, or was anybody with you?

A. Alone.

175 157. Redirect Q. Did Mr. Dalton request you to produce a sample net in imitation of Exhibit 12?

A. No.

158. Redirect Q. Were you trying to produce that sample for him—Mr. Dalton?

A. Yes.

159. Please explain why you were trying to produce such sample for him if he had not ordered you to do so.

A. To find work.

160. Redirect Q. When he told you, as you have heretofore stated, that he wanted something fresh, or a new hair-net, did he not indicate what kind of a new hair-net he wanted?

A. Not exactly.

161. Redirect Q. What did he say to you?

A. I don't remember now. He wanted something new. That's all I can remember.

162. Redirect Q. In answer to cross q. 119, you say but small quantities of the nets were produced by you and Windley in imitation of Exhibit 12. Please state in what condition the same were produced.

A. Well, it was a small quantity, produced in a small piece. It was not produced across the whole machine.

163. Redirect Q. Were those portions that you produced successful imitations of Exhibit 12?

A. No.

164. Redirect Q. Please explain why not.

A. We didn't get it perfect.

165. Redirect Q. In what were they imperfect?

A. In the laying in of the fine thread.

166. Redirect Q. Did you, in making that experiment, use thick and fine threads?

A. Yes.

167. Redirect Q. What were they wound upon on the machine?

176 A. The thick thread was wound on the beam and the thin thread on the bobbin.

168. Redirect Q. Was that your first experiment to use thick and thin threads together on a lace-machine?

A. I have worked for twenty years thick and thin threads together on a lace-machine.

169. Redirect Q. How long have you been a lace-maker?

A. Between thirty and forty years.

HENRY WILLIAMSON.

Subscribed and sworn to before me this 24th of April, 1873.

JOHN A. SHIELDS,
Commissioner, etc.

Adjourned to Tuesday, April 29, at 11 o'clock a. m.

TUESDAY, *April* 29, 1873.

Present: Counsel for respective parties.

ABRAHAM G. JENNINGS, being called and duly sworn as a witness on behalf of the defendant, deposes and says:

1. Q. What is your age, residence, and occupation?

A. My age is 51; I reside in Brooklyn, and I am a lace-manufacturer.

2. Q. How long have you been a lace-manufacturer?

177 A. Since 1867 I have been in that business.

3. Q. Please examine the net marked "Complainant's Exhibit E," and state whether you have seen fabrics of that description before; and, if so, when and under what circumstances?

A. I have seen fabrics of this description before, and in the shape of hair-net, as far back as 1869. The hair-net sample was sent to me from Nottingham, England, with a draft how to make it; a designing draft, as it called.

4. Q. Who sent you that design?

A. Matthew Robinson.

5. Q. Can you state the month of the year 1869 that that design was sent you by Matthew Robinson?

A. It was in July.

6. Q. Please examine the sketch marked "Defendant's Exhibit 9," and state if you have seen it before; and, if so, what it represents.

A. Yes, I have seen it; it represents a design and draft for lace or hair-net.

7. Q. When did you see it first and under what circumstances?

A. In July, 1869; it was enclosed in a letter from Matthew Robinson.

8. Q. Have you that letter here?

A. I have a letter here from Matthew Robinson, stating that he would enclose this draft, but not the letter enclosing it.

(Letter offered in evidence by defendant's counsel, and same is marked "Defendant's Exhibit 13, April 29, 1873, J. A. S., Exr.")

9. Q. What has become of the letter which was sent you with the draft?

A. It has got mislaid. The sample or draft came two or three days after the letter Exhibit 13.

10. Q. Did you receive from Matthew Robinson only those two letters in reference to the design Exhibit 9?

178 A. I received only two at that time, but none other since, except one or more.

11. Q. Have you any other letter from Matthew Robinson referring to the design Exhibit 9?

A. I have one letter here; it is dated April 19, 1872.

(Letter and envelope offered in evidence by defendant's counsel, and same is marked, "Defendant's Exhibit 14, April 29, 1873, J. A. S., Exr.")

12. Q. What did you do with regard to the design sent you by Robinson after you had received it?

A. I laid it aside for future use.

13. Q. Did you ever make any future use of it; and, if so, when first?

A. I did; in the summer of 1871.

14. Q. What did you do at that time with regard to the design?

A. I directed my men to make a net according to the design, and the warp was put on the machine and the net was made.

15. Q. To what extent was the fabric produced by you at that time?

A. I don't remember whether I made more than one warp or not at that time.

16. Q. How much, about, will one warp produce?

A. I can't say; about twenty gross.

17. Q. What did you do with the net produced on that design, Exhibit 9, in the summer of 1871?

A. I got it ready for sale, and sold it.

18. Q. Do you remember when you sold the first—I mean, in what month?

A. I do not, exactly. It was in the fall of 1871.

19. Q. On what machine was that net made?

A. It was made on a Leaver's bobbin lace-machine.

20. Q. Can you tell on what machine the net Exhibit E has been made?

179 A. I should say that it was made on a Leaver's bobbin lace-machine.

21. Q. What induced you to manufacture that net in the summer of 1871?

A. To increase my trade, if I could.

22. Q. Why did you select that particular style of net to increase your trade?

A. There was, then, some demand for fancy nets, and I thought I would bring this out, as I had long intended to do.

23. Q. Please examine the net marked "Defendant's Exhibit No. 10," and state whether it is of your manufacture, or whether you made nets like that.

A. I made nets like this, and I believe this is my manufacture.

24. Q. When did you first make nets like Exhibit 10?

A. From the commencement of my business, in 1867.

25. Q. What is the distinguishing characteristic of the net Exhibit E, as compared with the net Exhibit 10?

A. Exhibit E is made on a bobbin lace-machine; made by the use of bobbins and carriages twisting around the thread. Exhibit 10 is made on a warp lace-knitting machine, by the use of needles, and not of bobbins.

(Complainant's counsel objects to the introduction of Exhibits 13 and 14, purporting to be letters from England, as incompetent and immaterial and irrelevant.)

26. Q. Aside from the construction of those two nets, Exhibits E and 10, what difference do you find in their appearance?

180 A. Exhibit E has meshes composed of thick and thin threads, and meshes of unequal size; and in Exhibit 10 the size of the meshes is equal and the size of the thread is equal.

27. Q. What was your object in using thick and thin thread in making the net, in the summer of 1871, of which you have spoken?

A. It was to meet a supposed demand for what were called fancy nets.

28. Q. If you compare Exhibits E and 10, can you state whether the fine threads of Exhibit E are finer or heavier than the threads used in Exhibit 10?

A. They have the appearance of being finer, but I believe them to be the same, owing to the different construction of the pillar.

29. Q. Is the difference, if any, between the fine threads of Exhibit E and the threads of Exhibit 10 such that you could detect it on the head of the wearer?

A. I don't think I could.

30. Q. Please examine the fabric marked "Defendant's Exhibit No. 2,"

and state whether it is of your manufacture; and, if so, when you first made such fabric.

A. I manufactured this in the latter part of 1867 and the spring of 1868, for about three months, I suppose.

31. Q. What kind of a machine is that made on?

A. On a warp lace-machine.

32. Q. Are the fine threads of Exhibit 2 finer or heavier than those of Exhibit E?

A. I believe them to be about the same.

33. Q. Please examine the net marked "Defendant's Exhibit 1," and state whether you have seen it before; and, if so, when first, and where.

A. Yes; I have seen it before. It was in the latter part of 1871 or beginning of 1872, I don't know which, at my office.

34. Q. Was it made by you?

181 A. No; it was not. It was sent to me as a sample net, to order from, by Pratt, Hurst & Co., Nottingham, England.

35. Q. Please examine the net marked "Defendant's Exhibit 11," and state whether you have seen fabric of that description before; and, if so, when first, and where.

A. I have seen it before, in the markets of New York, more than ten years ago.

36. Q. Can you describe the fabrics referred to in your last answer, and which you say you have seen in New York more than ten years ago?

A. It was a loose net with open meshes of thin thread and a large mesh of thick thread, or intersected by thick threads.

37. Q. Can you name any particular locality where you have seen such nets?

A. I cannot name any particular firm; it was in wholesale importing dry-goods houses.

38. Q. Please examine the paper contained in the certified copy of the file-wrapper, marked "Defendant's Exhibit 4," and purporting to be a copy of a letter addressed to the Commissioner of Patents by A. G. Jennings, and dated October 16, 1871, and endorsed "Patent Office, October 18, 1871," and state whether you have written such a letter to the Commissioner of Patents at that time.

A. I wrote a letter to the Commissioner of Patents about that time, and I believe this to be a copy.

39. Q. Did that letter enclose a sample like the piece of net now appended to the copy?

A. I think it did.

40. Q. Are you practically acquainted with the operation of lace-machines and their construction?

A. I am not a practical operator or maker of lace, but have a general knowledge of their construction.

41. Q. Are the warp lace-machines and Leaver's lace-machines both usually styled lace-machines?

A. They are.

182 42. Q. Could, in your opinion, a fabric like Exhibit E be made on a Leaver's lace-machine with pillars composed of single strands?

A. I do not think so. All the pillars in a lace machine are composed of two strands, the warp-thread and the bobbin-thread.

43. Q. Is that also the case in warp lace-machines?

A. No, it is not. The pillar for a warp lace-net can be made of a single thread, knitted, and generally is.

44. Q. Are the pillars of Exhibit 2 made of single threads?

A. Each separate pillar is, except where the thick thread comes in.

45. Q. Please examine the fabric marked "Exhibit 8," and state whether the white pillars are made of single or double threads.

A. Made of single thread.

46. Q. If a fabric like Exhibit E is made of double strands in each pillar, could, in your opinion, the same be so made that such double strands pass through each other?

A. No. They would either pass on top or bottom, or become connected by the bobbin thread winding around.

47. Q. Could a fabric made on a warp lace-machine, of the style of Exhibit E or Exhibit 10, be so made of double strands that such double strands pass through each other?

A. If it is made of thick threads, the thick threads could not pass through the thick threads, but they could be knitted or joined at the corners.

48. Q. Could they be made to pass through each other in the style represented at the upper right-hand crossing of the heavy coarse thread in figure 2 of complainant's Patent Exhibit A?

A. I don't think they could. That looks as if it was put through with a needle, the whole double strand.

183 49. Q. In his Patent Exhibit A the complainant states that the fabrication of a net, whose double strands pass through each other, as shown in figure 2, is well known to lace manufacturers; is it so known to you?

A. It is not. The pillars of any square-mesh net are connected at the corners by bobbin-thread.

50. Q. Please examine the fabrics contained in Exhibit 3, and state from whom you received them, and when.

A. I received them from Pratt, Hurst & Co., in the latter part of last year, or the fore part of this, when they were returned to England, to be certified to at the Patent-Office by the consul-general of the United States.

Cross-examined by Mr. J. Van Santvoord, complainant's counsel:

51. Cross Q. What business were you in before 1867, and where?

A. In the wholesale clothing business, in New York City.

52. Cross Q. Where were you in business ten years ago?

A. In Broadway, in this city.

53. Cross Q. How do you know that it was in July, 1869, that Matthew Robinson sent you a design of work like Exhibit E?

A. I had considerable business with him that season in machinery, and silk, and other things.

54. Cross Q. What did you get from him that year besides that design?

A. One or two machines, or parts of machines. They were Leaver's lace-machines, and some Jacquards, silks, and samples of silks and laces.

55. Cross Q. From whom did you obtain the machines with which you began business as a lace manufacturer, in 1867?

A. Riley & Green, of Jersey City.

184 56. Cross Q. When did you first make purchases of Matthew Robinson, of England?

A. I think in 1868.

57. Cross Q. Where did he carry on business then?

A. In Nottingham, England.

58. Cross Q. How came you to buy machinery or any other articles from him?

A. He was recommended to me, I think, by some of my men.

59. Cross Q. What articles did you produce as a manufacturer of lace in 1867?

A. Hair-nets.

60. Cross Q. Where is the sample that you speak of in answer to the interrogatory?

A. The little sample was mislaid or lost. It was with a lot of other samples, nets and laces. The design in draft Exhibit 9 is all that I have preserved.

61. Cross Q. How large a sample was it?

A. As near as I can remember, it was as big as my hand. It was white.

62. Cross Q. How long did you preserve it?

A. I can't tell.

63. Cross Q. Can you tell why you did not preserve it?

A. I did not think it of much importance at the time, my attention being called to business of more importance. I received a great number of samples which were not preserved.

64. Cross Q. By means of what circumstance or event do you fix July, 1869, as being the time such designing draft was sent you by Matthew Robinson?

A. I know it was received at the time that I received machinery and samples from him. It agrees with my knowledge of my books at the time. Now I remember it very distinctly that it was in July, because I had been waiting for some machinery from Robinson.

185 65. Cross Q. What machinery? Specify the several machines you refer to.

A. Two or three Jacquard machines and one Leaver's twist-machine. The Jacquards were what I was waiting for particularly.

66. Cross Q. By Jacquard machines do you mean cards or Jacquard frames?

A. The frames in which the cards move.

67. Cross Q. Are you certain that you received of Matthew Robinson in July, 1869, two or three Jacquard machines and one Leaver twist-machine?

A. The machinery did not come until after July. The invoice and bill of lading came, enclosing samples.

68. Cross Q. By what ship were the machines imported, and into what port of the United States?

(Objected to as immaterial.)

A. I don't remember what ship. I think she landed at New York or Jersey City; I don't remember which.

69. Cross Q. Who acted as your broker on that importation?

(Same objection.)

A. I don't remember who was my broker.

70. Cross Q. Who has acted as your custom-house broker since?

(Same objection.)

A. Austin, Baldwin & Co., and another express that was down in Pearl street.

71. Cross Q. Do you not now recall the name of the custom-house broker that you employed in 1869?

A. No, I do not.

72. Cross Q. Was this Leaver's twist-machine the first one of that kind received by you from Matthew Robinson?

186 A. I am not sure.

73. Cross-Q. When did you first buy any machine of any kind from Matthew Robinson? Mention what such machine was.

A. I don't know whether it was in 1868 or 1869. It was what is called a Leaver's twist-machine.

74. Cross Q. If the first Leaver's twist-machine you got from Matthew Robinson was got in 1868, how many such did you get in that year from him?

A. I am not sure that I got any in that year; and, if so, not more than one.

75. Cross Q. If you got one, what was the price?

A. I don't remember the price.

76. Cross Q. Was it £100, or less?

A. Less.

77. Cross Q. Was it as much as £50?

A. I don't remember; I don't keep the cost of my machines in my head.

78. Cross Q. Did you get any such machines, or any machines for making lace, from Matthew Robinson in 1869?

A. I believe I did.

79. Cross Q. Give the names by which such machines are known to you, which you so got from him in 1869?

A. They were Leaver's twist-machines. They were not warp lace-machines. All second-hand.

80. Cross Q. How many Leaver's twist-machines did you get from him in 1869?

A. I don't think over one.

81. Cross Q. In what month did you get that?

A. I am not sure in what month. I am not sure when the invoice of the lace-machine came. I generally received the machines about two weeks after the invoice, unless there was some delay in the storage or custom-house.

82. Cross Q. Did the Leaver's lace-machine of 1869 and the two or three Jacquard machines you have spoken of come in the same
187 vessel, or about the same time, or at different times; and, if at different times, which came first?

(Objected to as immaterial.)

A. They may have come at the same time. I don't remember which came first.

83. Cross Q. When next did you get a Leaver's twist-machine from Matthew Robinson?

(Same objection.)

A. I think I got one in 1870.

84. Cross Q. How many lace-making machines have you received from Matthew Robinson altogether?

(Objected to as already answered.)

A. I have got two or three, I forget which.

85. Cross Q. How many Leaver's twist-machines have you now?

(Objected to as not cross-examination.)

A. I think I have over twenty.

86. Cross Q. Can you ascertain from your books, or otherwise, how many Leaver's twist-machines you have received from Matthew Robinson, and the times when you received them?

A. It might be done, but not without a good deal of trouble, for we have been moving, and I don't know where the old books and papers are.

87. Cross Q. Will not your books show the times and amounts of the payments to Robinson for any ma'hines you bought of him?
(Objected to as immaterial.)
A. They may.
88. Cross Q. Will you please search and ascertain at the next meeting of your examination, how many Leaver's twist-machines you
188 have bought from Matthew Robinson, and the times when you received each?
A. It will be quite a job. I don't think I will have leisure to overhaul my old books. I don't know where to lay my hands on them.
89. Cross Q. Please do the best you can to ascertain those facts. Have you obtained from Matthew Robinson any warp lace-machines?
A. I don't think I have.

Further cross-examination of this witness adjourned to Friday, May 2nd, 1873, at 1.30 o'clock p. m.

FRIDAY, *May 2d*, 1873.

ABRAHAM G. JENNINGS, being further cross-examined by Mr. J. Van Santvoord, complainant's counsel, deposes and says:

90. Cross Q. Hear the examiner read cross-q. 88 and 89 and your answers thereto, and state if you have got the information there asked for.
A. I have not had time or opportunity to gain any further information.
91. Cross Q. How long a time would it take to look in your books for those facts?
(Objected to by defendant's counsel as incompetent.)
A. I don't know.
92. Cross Q. Are your books of account, which contain your dealings with Matthew Robinson for 1868 and 1869, correct?
189 (Same objection as before.)
A. I kept no account with Matthew Robinson.
93. Cross Q. Do your books show your payments to Matthew Robinson for any of the machines or parts of machines you say you obtained from him?
(Same objection as before.)
A. I do not know that they do.
94. Cross Q. Do you not keep accounts showing to whom you pay money?
(Same objection as before.)
A. I keep them for a while; I do my business for cash, and I do not keep any ledger accounts with parties—that is, parties that I purchase of.
95. Cross Q. Do you mean that you now keep, or have kept heretofore, accounts of payments?
(Same objection as before.)
A. Both.
96. Cross Q. Will not your books show the time and amounts of your payments to Matthew Robinson for the machinery and parts of machinery which you say you obtained from him in 1869 and 1870?
A. I am not sure that they will.
97. Cross Q. Have you, then, no record of any payments to him by you for or on account of such machinery?
A. I do not know where I could lay my hands on any. At the time of my removal, a large lot of papers, which we thought were of no account, were torn up and destroyed—things that were settled. The re-

moval I refer to was from No. 49 Barclay street, New York, to Park avenue and Hall street, Brooklyn, in the winter of 1871–'72.

98. Cross Q. Who destroyed these papers?

(Objected to as immaterial.)

190 A. I did; perhaps assisted by one of my boys, looking them over.

99. Cross Q. What was the boy's name?

(Same objection as before.)

A. My son Warren was one, and Swabach, I think, but am not sure.

100. Cross Q. Were there any receipts among these papers that you destroyed?

(Same objection as before.)

A. Yes; there were receipts and bills of accounts that were settled and considered of no use, and of which we did not want the trouble of filing away.

101. Cross Q. Did any of these papers contain receipts from Matthew Robinson of the machinery in question?

A. I cannot say.

102. Cross Q. Was it on the occasion of looking over and destroying these papers that you found and saved the piece of paper Defendant's exhibit 9?

A. That draft was laid aside for future use from the time I got it.

103. Cross Q. Were any of these papers that you destroyed receipts for money paid?

(Objected to as immaterial, and as having been already answered.)

A. Yes, I believe they were.

104. Cross Q. Can you specify any of them?

A. No, I cannot.

105. Cross Q. Did you, on that occasion, destroy any of your books of account, also?

A. There was a number of books thrown among the waste paper.

106. Cross Q. Were they books of account of your business?

191 A. Some sorts of accounts.

107. Cross Q. Did you, in 1869 and 1870, employ a book-keeper?

(Objected to as immaterial.)

A. I did.

108. Cross Q. What was his name?

A. Edward St. John.

109. Cross Q. Is he with you now?

A. No; he is not.

110. Cross Q. Where is he, if you know?

A. He is dead.

111. Cross Q. When did he die?

(Objected to as immaterial.)

A. In 1871.

112. Cross Q. How many persons did you have in your employment, on an average, in 1871?

(Same objection, and as indefinite.)

A. I don't know how many. I never counted them all up.

113. Cross Q. About how many?

(Same objection.)

A. I suppose over fifty.

114. Cross Q. About how many in 1869?

(Same objection.)

A. Perhaps about the same number.

115. Did you receive any invoice from Matthew Robinson, or from

any other person, of the machinery which you say you got from Matthew Robinson, in 1869, about July?

(Objected to as having been already answered.)

A. I must have had an invoice, if I had any machinery.

192 116. Cross Q. Do you not file your invoices?

A. I do not always file my invoices. When they are a year or two years old they are destroyed, sometimes.

117. Cross Q. Please state what books of account you are in the habit of keeping of your business.

(Objected to as immaterial, incompetent, and not cross-examination.)

A. Account of my sales, parties I sell to, and parties that owe me.

118. Cross Q. Do you keep account of parties to whom you pay money?

(Same objection.)

A. I keep no book-account, as a general thing.

119. Cross Q. Do you not keep account of payments of money?

(Same objection.)

A. Yes, for a while, at times.

120. Cross Q. Explain what you mean by the words "for a while," and "at times."

(Same objection.)

A. When we pay a bill there is an account of it kept until the bill may be destroyed, as I said before.

121. Cross Q. When the bill is destroyed what do you do with the account relating to it?

(Same objection.)

A. There may be a record of it, and there may not. It depends upon what it is and how old it is.

122. Cross Q. Cross-q. 121 repeated.

(Same objection, and as having been already answered.)

193 A. The account may be destroyed, or not. It may be thrown among the waste paper.

123. Cross Q. State whether or not you kept a daily record in your business of moneys paid out?

(Same objection as to cross-q. 117.)

A. Yes, I keep a record; sometimes it is a weekly record.

124. Cross Q. Cross-q 123 repeated, and the witness is asked to state whether he keeps a daily record.

(Same objection.)

A. In Howard street there is a daily record kept. Over in Brooklyn sometimes it is not written up but once a week.

125. Cross Q. Do you keep two establishments, then?

A. Since my removal I have kept a place for selling my goods in New York.

126. Cross Q. How many sets of books did you keep in 1869?

(Same objection as before.)

A. A set showing my sales, and another what I paid to my hands in manufacturing.

127. Cross Q. What did the sales-book show?

(Same objections as before.)

A. What I sold.

128. Cross Q. Did you then have any book which showed moneys paid out from time to time, besides the wages-book?

(Same objection as before.)

A. Yes.

194 129. Cross Q. Does that book last mentioned show payments made by you for supplies or machinery furnished to you?

(Same objection as before.)

A. It probably did.

130. Cross Q. Will you produce that book?

A. I don't know that I can, at any date previous to 1872 or 1871.

131. Cross Q. Will you look for it, and produce it if you find it?

A. I don't know exactly where to put my hands on it, and I don't think that I have the time to do so.

(Counsel for complainant here gives notice to counsel for defendant to produce the book referred to in the last four interrogatories and answers thereto, and gives the like notice to the witness, and requests that such book be produced, or evidence of its loss or of its destruction, and of the time when lost or destroyed, by the next session of this examination.

Counsel for defendant states, in reply, that evidence of the loss or destruction of such book having been already produced, the request of complainant's counsel cannot well be complied with; and also gives notice to counsel for complainant to show in what respect any papers or documents, by him called for, have any bearing on the issue of this case, before making further requests of such production.

Counsel for complainant notifies counsel for defendant that the witness, on direct examination, testified to the purchase and receipt by him, from Matthew Robinson, of certain machinery, and one object of his cross-examination, and of the notice or request above made, is to
195 ascertain the date of such receipt of said machinery.)

132. Cross Q. Will you please search for the book of account containing entries of payments by you in 1869 for supplies or machinery relating to your business, and report the result of your search at the next session of this examination?

A. I have answered before that I don't know where to lay my hands on it; don't know whether I have got it; don't know whether I will have the opportunity to search for it.

133. Cross Q. Do you refuse to search for it?

A. Until directed by my counsel that it is absolutely necessary, and required to find out the merits of this patent case.

(Counsel for defendant instructs witness that he is at liberty to search or not, as his time and convenience may permit.)

134. Cross Q. Cross-question 133 repeated.

(Objected to as already answered, and witness is instructed that he may decline to answer this question.)

A. I decline to answer.

(Counsel for complainant here gives notice to counsel for defendant that the instructions of counsel for defendant to the witness are unwarranted and unlawful, and that the same are an obstruction of the just rights of complainant and an interference therewith; and notifies him and the witness that an application will be made, as speedily as possible, to the judges of this court, to compel the witness to reply to
196 the questions asked of him, and to give the information called for, and to search for and produce the account, or book or books referred to in cross-questions and answers 128, 129, 130, 131, 132, 133, and requests the examiner to adjourn the further examination of the witness until such application shall be made and heard by said court.

Counsel for defendant, in reply to the above notice, states that the witness has been sworn to testify to his knowledge in this matter, not as regards any future action or actions, and that therefore the instructions by defendant's counsel to the witness are neither obstructions to the complainant's rights, nor an interference therewith; that, furthermore, the wit-

ness, not having refused to search for the book, though stating that, to the best of his knowledge, it had been destroyed, has certainly complied with all reasonable requests of complainant's counsel, although he is fully justified in declining to search for a book which he knows cannot be found, because of its loss or destruction, as appears by the answer to cross-questions 97, 98, 100.)

Adjourned to Thursday, 8th instant, at 11 a. m.

And thereupon, that is to say, on the 6th day of May, 1873, counsel for complainant made a motion before his Hon. Judge Blatchford for an order that the witness A. G. Jennings answer cross-interrogatories 133 and 134, or, in case of refusal so to do, that his whole deposition be stricken from the record of this cause, and the remarks and instructions by defendant's counsel to the said witness, following the answer to
197 cross-interrogatory 133 and following the cross-interrogatory 134, respectively, and following the answer to cross-interrogatory 134, be stricken from the record, and for such other order or relief as to that court may seem meet; which motion was heard by his Hon. Judge Blatchford, and denied.)

THURSDAY, *May 8th*, 1873.

Present: Counsel as before.

Cross-examination of ABRAHAM G. JENNINGS resumed:

135. Cross Q. Have you, since the adjournment, ascertained whether your book of account, containing entries of payments made in 1869 for supplies or machinery in your business, is still in your possession?

(Objected to as irrelevant.)

A. I have not.

136. Cross Q. Do you believe that you have that book in your possession or control?

(Same objection; and counsel for complainant is requested to examine the witness as to his knowledge, not as to his belief.)

A. I am not sure that I have.

137. Cross Q. Have you any objection to look for it?

198 (Objected to as not cross-examination, and, in fact, not examination of the witness' knowledge of fact, and the witness is instructed that he may deny to answer the question.

Counsel for complainant objects to such instructions to the witness, and gives notice to defendant's counsel that he protests against such interference with the course of the examination, and that motion will be made at the hearing, or at other proper time, that the deposition of the witness be disregarded, and stricken from the record on account of such interference.)

A. Under instructions, I decline to answer.

(Complainant's counsel gives notice to defendant's counsel that he will, at the proper time, move that the deposition of the witness be disregarded and stricken from the record because of his refusal to answer the last question, and because of such answer.

Counsel for defendant, in reply, states that a motion having been made on the 6th of May, 1873, by complainant's counsel, for an order that this witness answer cross-questions 133 and 134, or in case of refusal that this whole deposition be stricken from the record, etc., etc., which motion was heard by his honor Judge Blatchford, and denied, and that as cross-question 137 is substantially a repetition of cross questions 133 and 134, any further motion regarding the matter will be unnecessary and improper.)

138. Cross Q. Are you willing to allow complainant or his counsel to examine such book of account?

199 (Same objection as to last question.)

A. No; I am not willing that any man should examine all my business matters that may be contained in my books. It would be very improper, in my view.

139. Cross Q. Hear the officer read questions Nos. 12, 13, and 14, and your answers thereto, and state what men you refer to in that answer to question No. 14, and explain what they did in order to make the net you speak of.

A. I am not sure what men, but I think Mr. Brentnell and Mr. Jefford. They punched the cards for the Jacquard according to the figures of the draft, as I understand, and entered the warp-threads, and worked as usual on one class of machine—on the Leaver's lace-machine.

140. Cross Q. How long did it take them to punch the cards and prepare the machine?

A. I do not remember exactly, but I think it was a week or more before they got it right.

141. Cross Q. How many different sizes of bobbin-threads did they use?

A. I think but one size.

142. Cross Q. How many different sized warp or beam thread did they use?

A. Two, I believe.

143. Cross Q. How many bars did they use?

A. I don't remember whether it was less than four or more than eight.

144. Cross Q. You say, in answer to question 38, that you wrote a letter to the Commissioner of Patents about October 16th, 1871, of which you believe Exhibit 4 contains a copy. How did you learn that Mr. Dalton had made the application that you refer to in that letter?

A. I do not remember exactly how I learned that; it was a common report among the workmen, they often reporting what the different manufacturers are doing.

200 145. Cross Q. Describe the relative positions in the machine on which you made the new net, in the summer or fall of 1871, of the thick and thin threads.

(Objected to as indefinite.)

A. As it is some time since any have been made, I do not remember their relative positions.

146. Cross Q. Can you produce any of the said nets made by you in the summer or fall of 1871?

A. I am not sure that I can; I may be able to find some made at that time.

147. Cross Q. Where did you get the piece of net which, as you say, you sent to the Patent Office with your letter?

A. I think one of my young men got it somewhere around this city, in one of the dry-goods houses.

148. Cross Q. Do you know whose manufacture it was?

(Objected to as immaterial.)

A. I don't know, but was informed that it was Mr. Dalton's.

149. Cross Q. Had you at the time of writing said letter to the Patent-Office made any such net as yet?

A. Yes; I think we were making them at the time.

150. Cross Q. What do you mean by "making them?" Knitting the goods, or what?

A. I mean the process of getting ready or knitting; I don't remember which.

151. Cross Q. Look at Exhibit 9, and state if you know who wrote the name Matthew Robinson on it?

A. I believe I wrote that on.

152. Cross Q. When?

A. About the time I received it; it is my custom to put persons' names on any designs or drafts they may give me.

201 153. Cross Q. Look at the letter Exhibit 13, and state what two machines are referred to as having been sent to you on the last page of that letter?

A. I don't distinctly remember what machines they are.

154. Cross Q. What machine is referred to in the first page of that letter, and state if the reference to a machine on said first page is to the Leaver's twist-machine you have testified to as being received by you in or after July, 1869.

A. I do not remember distinctly; it may refer to the Leaver's twist-machine; the one he speaks of in his letter and the other machinery referred to were machines or parts of machines of which the invoices were received in July, but which had not arrived.

155. Cross Q. Please take Exhibit No. 13, and quote those words therein to which you refer when you say in your last answer, "Leaver's twist-machine, the one he speaks of in his letter."

A. Where he says "and the machine?"

156. Cross Q. Quote also from said letter Exhibit 13 those words you find therein, to which you refer in answer to cross-question 154, where you say "and the other machinery referred to;" confining yourself to the first page of said exhibit.

A. That portion of my answer to cross-question 154 referred to some other machinery referred to in the letter. It is the portion of the letter which says "neither of them so good as the two machines I have sent out to you." These words occur on the last page of the letter.

157. Cross Q. When did you receive the invoices for those two machines, and when did you receive the machines themselves, and what machines were they?

(Objected to as already answered.)

A. The machines came at different times and the invoices at
202 different times. I am not sure when I received the invoice of the Leaver's machine. When the machines were received by me in the store I cannot say; there was oftentimes great delay after getting the invoice. I think he refers to Leaver's machines.

158. Cross Q. Do I understand you that the two Leaver's machines had been already received by you before you received the letter Exhibit 13?

A. One of them had; I am not sure whether the other machine had then actually arrived or not.

159. Cross Q. Was "the machine" which is mentioned on the first page of the letter Exhibit 13 one of the "2 machines" which are mentioned on the last page thereof, or is that a third machine?

(Objected to as immaterial.)

A. It is one of the two machines.

160. Cross Q. To what machinery do the words on the first page of said letter Exhibit 13 refer, which are as follows: "I did not understand whether I was to send the nog jack crane with droppers; I can send either or both; they would come in the same cases and at the same cost; please let me know as soon as you possibly can make it convenient to do so?"

(Same objection.)

A. He refers to the Jacquard machine; but it may not have been any machinery he sent me. This letter does not govern any machinery, whether he sent this or not.

161. Cross Q. Did you reply about the "nog jack" and "droppers?"

(Same objection.)

203 A. I had probably given him instructions before the letter was received; I am not sure whether I replied to this letter.

162. Cross Q. Was either of these "2 machines" which are referred to in the letter Exhibit 13 the same machine of which you speak in answers to cross-questions 64 and 65?

A. I think one of the Leaver's was the machine received by me at the time, and the Jacquards were received at that time, as well as samples of goods, laces and silks, with which Exhibit 9 came.

163. Cross Q. Did the Leaver's machine you refer to in answers to cross-questions 64 and 65 bear any particular number, or designation, or mark; and, if so, what?

(Objected to as immaterial.)

A. It may have had some temporary number or mark on it.

164. Cross Q. Are the Leaver's machines you received from Robinson marked or stamped with his name, or labeled in any way?

(Same objection.)

A. No; they were not. He acted more as a broker in buying machines, and not as a maker, as far as I was concerned. They were not labeled in any way that I remember.

165. Cross Q. You are certain, are you, that in the same lost letter, which contained, as you say, the diagram Exhibit 9, there was contained also the invoice for a Leaver's twist-machine and for Jacquard machinery, are you?

A. I am not certain that the invoices of one or both machines were in that letter. I am sure that the letter which contained Exhibit 9 contained samples of silks and laces. I remember there was attached

204 to Exhibit 9 a paper giving some description of the net, which slip has been lost; and I know that it was received shortly after receiving the letter, Exhibit 13, which refers to sending Exhibit 9.

166. Cross Q. Specify according to your best recollection what the lost letter you refer to contained besides the diagram, Exhibit 9, and the lost slip attached to that diagram, and the lost samples of which you have spoken?

A. I do not remember. Mr. Robinson was in the habit of writing short slips and pinning them to samples of silks or laces, and sometimes samples of bobbin and carriage of machines, with a slip attached, the bobbin and carriage being considered a fair representation of a machine.

167. Cross Q. Are you certain that you ever did receive any invoice of the Leaver's machine, which machine you say you received in or after July, 1869?

(Objected to as already answered.)

A. Yes; I must have received some invoice since I received the machine.

168. Cross Q Do you recollect in what month such invoice came to you, if at all?

(Objected to as immaterial and as already answered.)

A. I don't remember positively.

169. Cross Q. Was the invoice of said Leaver's machine accompanied by a consul's certificate?

A. I am not sure; sometimes they were.

Redirect, by Mr. Briesen:

170. Redirect Q. Are you personally acquainted with Matthew Robinson? and, if so, state when you have seen him, and where.

205 A. Yes, I am. I saw him in Nottingham, England, in the latter part of 1870.

171. Redirect Q. Did you ever see him write?

(Objected to as immaterial.)

A. I am not sure that I have. When we were together at Nottingham we referred to some of his letters and accounts that I had received from him, but I am not sure whether I saw him write or not.

172. Redirect Q. Did he recognize the letters that you have received from him as having been written by him?

(Same objection.)

A. He did.

173. Redirect Q. Were they in the same handwriting as Exhibits 13 and 14?

(Same objection.)

A. They were.

A. G. JENNINGS.

Subscribed and sworn to before me this 8th day of May, 1873.

J. A. SHIELDS,
Examiner, etc.

FRIDAY, *May 9th*, 1873.

Present: Counsel as before.

HENRY G. H. SOAR, being called and duly sworn as a witness in behalf of the defendant, deposes and says:

206 1. Q. What is your age, residence, and occupation?

A. I am 47 years of age; I reside at No. 16 Myrtle avenue, Brooklyn, E. D.; I am a manufacturer of Nottingham and French silk lace and hair-nets.

2. Q. How long have you been a manufacturer of French lace and nets?

A. I will have been in business for myself three years in July; I have been working a machine over thirty years, and I have been a threader and winder for forty years.

3. Q. On what machines have you been accustomed to work in making lace?

A. Leaver's lace-machine.

4. Q. Are you also acquainted with the construction and operation of warp-lace machines?

A. No, sir; I am not.

5. Q. In operating Leaver's lace-machines have you ever used them with double beams?

A. Yes, with as many as a hundred beams.

6. Q. What is the object of using more than one beam on a Leaver's lace machine?

A. Use it to make gimping, fine threads or thick threads, or to make a fancy fabric.

7. Q. When you use fine and thick threads of the same fabric, can you not take them from the same beam, or must they be wound on separate beams?

A. Wound on separate beams; can't work them on one beam.

8. Q. When did you first produce fabrics on Leaver's lace-machine having thick and thin threads, and where?

A. In Nottingham, England, thirty years ago, and in France twenty-seven years ago; in this country a little over seven years ago—seven years last February.

9. Q. Can you describe the fabrics you made in this country about seven years ago on a Leaver's lace-machine, and having thick
207 and thin threads; I mean, can you describe the form and style of meshes and the direction of the several threads?

A. (Witness makes a sketch, which is offered in evidence by defendant's counsel, and same is marked "Defendant's Exhibit No. 15, May 9, 1873. J. A. S., Exr."

Witness says: The groundwork on this sketch, forming the squares, is made of fine threads and the rings are made of thick threads.)

10. Q. What were those threads that connect the rings diagonally?

A. Thick threads.

11. Q. Was there no connection of thick thread between the central ring of your sketch and the two upper rings?

A. Yes; I made it both ways.

12. Q. Is the fabric which you have sketched the only one you made in this country with thick and thin threads?

A. No; I have made several others within the last few years.

13. Q. Did you ever make a fabric on a lace-machine similar to Exhibit No. 6?

A. Yes.

14. Q. When was that?

A. A little over two years since.

15. Q. Where did you make it?

A. In Williamsburgh, New York.

16. Q. How much did you make of such fabric a little over two years ago?

A. I think I made about three pieces—what we call three pieces; there might have been fifteen or sixteen gross altogether.

17. Q. What induced you to make a fabric like Exhibit 6 at that time?

208 A. A friend of mine asked me if I could make him some thick and thin threads; I told him I could; I asked him what sort he wanted; he got a fine net and a thick net, and put one over the other, and said, "something like this;" I told him I would make one, and I did make two or three kinds.

18. Q. What is the name of that party?

A. C. F. Hardon and A. P. Bachman; one of them, Hardon, is salesman with Porter Bros., now in Broadway, just above Canal street; Bachman's place is in Williamsburgh, corner of South Eleventh and First streets; he has a factory there.

19. Q. Were these gentlemen, at the time you made the net for them, connected in business?

A. Yes; Bachman was the boss and Hardon was the salesman.

20. Q. Who spoke to you first about that?

A. Mr. Hardon.

21. Q. When did Mr. Hardon first speak to you about that net?

(Objected to as irrelevant and immaterial.)

A. Well, I believe it is over three years ago, but wouldn't swear to that; I believe it was before I went to England, and I went to England three years ago last Christmas.

22. Q. Can you not recall to your memory any circumstance or event by which you can fix that time?

A. I can't exactly; I know we were very busy at the time, and that time I was working for Bachman when Hardon asked me.

23. Q. When did you commence working for Bachman?

A. Seven years last April.

24. Q. When did you cease working for him?

A. Three years the third of next July.

25. Q. When did you return from England?

A. 23d of January, 1870.

209 26. Q. When in England, three years ago last Christmas, did you go to Nottingham?

A. Yes.

27. Q. Was it before or after you had been in Nottingham that you first produced a sample like Exhibit 6?

A. After I came back; I made it some time after I came back on one of my own machines; we were so busy when Hardon ordered it that there was not well time to make it.

28. Q. How long after Mr. Hardon ordered it did you go to work to make the first sample?

A. I can't tell.

29. Q. Did Mr. Hardon order it before you went to Nottingham, or after you returned?

A. I wouldn't swear that.

30. Q. When you were in Nottingham did you then see any nets of fabrics like Exhibit 6?

(Objected to as immaterial and irrelevant.)

A. No, I did not.

31. Q. In making a fabric on the style of Exhibit 6, would you or could you make it with single threads?

A. Yes; I could make it with all fine or part fine and part thick.

32. Q. Could you also make it with double strands, so that each thread of the fabric, both fine and course, would be double?

(Objected to as calling for an opinion instead of a fact.)

A. Yes.

33. Q. Did you ever make it of such double strands?

A. Yes.

34. Q. In making a fabric on a Leaver's lace-machine of double
210 strands that cross each other, is it, to your knowledge as a lace-maker, possible to put the double strands at each crossing through each other?

A. I think not; you can put a single thread, but not both.

35. Q. Please examine the fabric I now show you, and state whether you have seen fabric of that make before; and, if so, when first and where.

A. I made similar to this myself, in England, sixteen or seventeen years ago; not exactly like it, but near enough to pass for it; both edges of this piece have been alike, and a piece has been drawn from it.

36. Q. Did you ever make fabric of this description in this country?

A. Yes; I have got some myself, similar made, about two years since.

(Piece of lace put in evidence by defendant's counsel, and marked "Defendant's Exhibit No. 16, May 9, 1873. J. A. S., Exr.")

37. Q. When did you first see fabric like Exhibit 16 in this country?

A. I don't know as ever I have seen any exactly like it in this country, except what I made myself.

38. Q. Please compare Exhibit 16 with your sketch, Exhibit 15, and point out the difference between the two.

A. There is no comparison; the ground is not even the same; one is

made for veils, Exhibit 15; and the other, Exhibit 16, is made for narrow trimmings.

39. Q. Can you tell on what machine Exhibit 16 has been made?

A. Leaver's lace-machine; what we call "loop" net.

40. Q. Please point out in what respect the groundwork of Exhibit 16 is different from the groundwork of Exhibit 15.

211 A. Exhibit 16 is what we call "single loop;" Exhibit 15 is what we call "four-band net;" it takes as many threads again to make Exhibit 15 as to make Exhibit 16.

41. Q. You say that you made a fabric similar to Exhibit 16 about two years ago. Was that fabric then made by you as a new pattern or design?

A. As a new pattern.

42. Q. But not as a new design?

(Objected to as leading by complainant's counsel.)

A. Well, it was new to me at that time. I had forgotten all about what I had made 16 years ago as Nottingham lace, but not as head-nets.

Cross-examined:

43. Cross Q. How long have you been in this country?

A. Over nine years.

44. Cross Q. Are you a citizen of the United States?

A. I am not.

45. Cross Q. Did you ever work for the complainant, Joseph Dalton; and, if so, when?

(Objected to as immaterial, and not cross-examination.)

A. You might call it working for him; I made him a short warp on my machine and Reeves'. Mr. Dalton afterwards bought that machine. That was over four years ago.

46. Cross Q. You say your friends, Messrs. C. F. Hardon and A. P. Bachman, procured you to make a fabric similar to Exhibit 6, and that at that time Bachman was the boss and Hardon was the sales-

212 man. Are you sure Bachman and Hardon were together at that time?

A. I wouldn't swear whether he was at the corner of Church street with him, or whether he was with him at that time; he was selling for Bachman, anyhow.

47. Cross Q. Was Hardon in business for himself within several years in this city; and, if so, where?

A. He was; I believe it was three blocks from Warren street, in Church. He was in partnership with Dix.

48. Cross Q. Do you know a man of the name of Hendrickson, in connection with Hardon or Bachman, as salesman or clerk?

(Objected to as not cross-examination.)

A. No; I do not.

49. Cross Q. Are you certain that Hardon put the thick and fine nets over one another, to show you what he wanted in the new net, or was it some one else in connection with Hardon or Bachman?

A. I believe they both did it, both Hardon and Bachman, but wouldn't swear to both doing it.

50. Cross Q. Recall the time when this took place, and state what time of year it was, and where it took place.

A. The time of year I could not swear to. It was at the factory of Bachman, corner of South 11th and 1st streets, Brooklyn. Whether it was before I went to England or not, I cannot swear.

51. Cross Q. How soon after you returned from that visit to England did you complete the new net for Harden or Bachman?

(Objected to as already answered.)

A. I guess it was about two years from now. About a year after I came back.

213 52. Cross Q. Did Mr. Dalton notify you that such new net was an infringement of his patent of March 5, 1872, for "Improvement in ladies' hair-nets," and ask you to cease making and selling them?

(Objected to as immaterial, and not cross-examination.)

A. Yes; but I had made them a long while before that.

53. Cross Q. Did you cease?

(Same objection.)

A. Yes.

54. Cross Q. Did you, upon receiving such notice, or soon after, go to Mr. Dalton and promise to cease making and selling such hair-nets, and ask permission from him to sell the few that you had on hand?

(Same objection.)

A. Yes.

55. Cross Q. Did he give you that permission?

(Same objection.)

A. Yes.

56. Cross Q. In what year were you so notified—how long ago?

A. It must be about twenty months since he notified me to stop making them.

57. Cross Q. Look at the paper now shown you and say if that is a copy of the paper served upon you to cease making such hair-nets.

(Objected to as before, and as incompetent.)

A. I wouldn't swear to it; it looks something like it.

214 58. Cross Q. Did you ever have more than one written notice to that effect?

(Same objection.)

A. Not to my knowledge.

59. Cross Q. Do you now think it was twenty months since you received such notice?

(Same objection.)

A. I wouldn't swear to it.

60. Cross Q. How long do you now think it is since you received such notice?

(Same objection.)

A. Well, I think it might be from fifteen to eighteen months since, now.

(The notice shown witness is offered in evidence by complainant's counsel, and same marked "Complainant's Exhibit, Soar, May 9, 1873. J. A. S., Exr., 2."

Defendant's counsel objects to introduction in evidence of such notice, on the ground that it is incompetent.)

61. Cross Q. Look at the sketch, Exhibit 15, and state whether the bars or threads connecting the rings are left on the fabric, as shown in that exhibit, or are they cut away in finishing?

(Objected to as immaterial.)

A. Cut away in finishing.

62. Cross Q. Look at the fabric now shown you, and state if that is the same fabric which you have made a sketch of in Exhibit 15.

A. Same, when finished.

215 (Complainant's counsel offers fabric shown witness in evidence, and same is marked "Complainant's Exhibit, 'Spotted [illegible],' Soar, May 9, '73. J. A. S., Ex.")

63. Cross Q. Look at the net now shown you, and state if that is one of the nets made by you, as you have stated, for Hardon or Bachman.

A. I made one like it.

(Net shown to witness offered in evidence by complainant's counsel, and marked "Complainant's Exhibit H, Soar, May 9, 1873. J. A. S., Exr.")

64. Cross Q. Did you make the net, which you say is like Exhibit 6, for Hardon or Bachman?

A. Made it for Bachman; Hardon was selling them.

65. Cross Q. Is the fabric, Exhibit 16, called "edging?"

(Ojected to as immaterial.)

A. We can make it either edgings, footings, laces, or dresses.

Redirect:

66. Redirect Q. Who served the notice on you which you say you received fifteen or eighteen months ago, in reference to the Dalton patent?

A. A gentleman across the Park; he is a lawyer, over the Times building.

67. Redirect Q. Did that notice represent that Mr. Dalton had a patent for the net in question?

A. Yes.

68. Redirect Q. Are you sure that you received that notice no later than fifteen months ago?

216 A. I wouldn't be sure, I took so little notice of it.

69. Redirect Q. What induced you, then, to stop making the net, and to speak to Mr. Dalton in the manner stated by you, if you took but little notice of his request to stop?

A. Because I had no money to go to law—no money to spare; and I didn't want to go on making them. I was forced to stop.

70. Redirect Q. Did you stop making that net because you considered Mr. Dalton the first inventor of it?

(Objected to as irrelevant, and calling for an opinion.)

A. No; it was because I had no money to spare to go to law.

Recross:

71. Recross Q. Did you tell Mr. Dalton so when you promised to stop?

A. No.

HENRY G. H. SOAR.

Subscribed and sworn to before me this 9th day of May, 1873.

JOHN A. SHIELDS,
Examiner, etc.

SAMUEL ROEBUCK, being called and duly sworn as a witness in behalf of defendant, deposes and says:

217 1. Q. What is your age, residence, and occupation?

A. My age is 44; residence, Brooklyn, No. 250 20th street; my occupation, manufacturer of mosquito-canopies and weather-strips.

2. Q. Do you sell your mosquito-canopies alone or with the nets on?

A. We sell them both ways.

3. Q. How long have you been dealing in nets, and at what place?

A. Since 1861, in Brooklyn, New York, and New York City.

4. Q. Please examine the fabric marked "Defendant's exhibit 11,"

and state whether you have seen fabrics of that construction before; and, if so, when first.

A. According to my best recollection, I saw fabric of that description as far back as 1862.

5. Q. Where did you see fabrics of that kind in 1862?

A. I saw it in Paton & Co.'s store, large importers on Broadway, New York, near Leonard street; also, in the store of A. T. Stewart & Co., Chambers, Broadway, and Reade streets; it was used largely for Army purposes during the war, hospitals, etc.; it was also used in the South, in the negro quarters.

6. Q. Did you ever deal in nets of that description yourself?

A. I have never dealt in this netting, but I have dealt in a very similar netting, which is manufactured in this country for the purpose of a mosquito-bar. It is used principally in the Southern States for the same purpose as Exhibit 11.

7. Q. Please describe the netting which you say was made in this country, and was similar to Exhibit 11.

A. The netting I mentioned is what is called "cord netting," and made by all large manufacturers of mosquito-gauze; it has a
218 thick cord running lengthwise of the piece, about three inches apart; sometimes the cord is thicker than the warp of the cloth or it is the same warp, two warps being twisted together, to give it the appearance of a line or cord running through the cloth; these lines also run crosswise of the cloth, about the same distance apart; this cloth can be purchased from any mosquito-net manufacturer.

Cross-examined:

8. Cross Q. Is the fabric, Exhibit No. 11, made by weaving on a loom?

(Objected to as not cross-examination.)

A. I am not acquainted with loom-weaving, but in looking at Exhibit 11, it is manufactured somewhat differently to the mosquito-gauze manufactured in this country, as the cord-knitting I have before mentioned as having a thick cord running its length and width is twisted in each corner, while this Exhibit 11 is not.

9. Cross Q. Will you produce a sample of the goods you have just referred to?

(Counsel for defendant objects to this question, and requests complainant's counsel to produce the sample, if he desires it.)

A. If you desire it.

10. Q. I desire it. When will you do so?

(Same objection.)

A. I can bring it here this afternoon or can send it in in the morning.

219 (Complainant's counsel calling for the production of the fabric in question, a recess is taken to enable witness to produce it.

The witness appears, and produces two samples of cord mosquito-netting, and wishes to make the following statement in relation to them:)

In my former testimony I stated that, to the best of my recollection, they were woven differently from Exhibit 11. I find, on comparing the two samples which I have brought, and of which one is mosquito-netting and the other is buckram, that they are woven in the same way as defendant's exhibit 11, and not twisted in the corner of the mesh, as I have before stated.

(Complainant's counsel offers in evidence the two samples produced

by the witness, and they are marked "Complainant's exhibits I and J. May 9, 1873, J. A. S., Exr.")

SAMUEL ROEBUCK.

Subscribed and sworn to before me this 9th day of May, 1873.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Monday, 12th inst., at 11 o'clock a. m.

MONDAY, *May* 12, 1873.

Present: Counsel as before.

Adjourned to 14th inst., at 11 o'clock a. m.

WEDNESDAY, *May* 14*th*, 1873.

Present: Counsel as before.

Defendant's testimony closed.

220 Circuit court of the United States, southern district of New York.

JOSEPH DALTON
vs.
ABRAHAM S. JENNINGS.

Additional evidence, taken on the part of defendant, before me, as examiner, under order of court, dated July 25th, 1873.

NEW YORK, *Tuesday, August* 19, 1873.

Present: John Van Santvoord, counsel for plaintiff; A. V. Briesen, counsel for defendant.

JOHN ROBINSON, a witness called and sworn on behalf of defendant, deposes and says as follows:

1. Q. What is your age, residence, and occupation?

A. Age, 44; residence, 181 Willoughby avenue, Brooklyn; occupation, lace-maker.

2. Q. Of what place are you a native?

A. Nottingham, England.

3. Q. Have you a brother in Nottingham; and, if so, what is his name?

A. Yes, sir; Matthew Robinson.

4. Q. What is his business?

A. Lace manufacturer.

221 5. Q. Are you acquainted with his handwriting so that you could recognize it?

A. Yes, sir.

6. Q. Please look at the three letters which I now hand you, which are marked "Defendant's exhibit 13, 14, and 17," respectively, and state in whose handwriting they are, if you know.

(Objected to, as incompetent and immaterial.)

A. Yes, sir; Matthew Robinson's, my brother's.

7. Q. How long have you been in this country?

A. A little over eight years; between eight and nine.

8. Q. Are you acquainted with A. G. Jennings, the defendant in this cause; and, if yea, how long have you known him?

A. Yes; I have known Mr. Jennings about six years, as near as I can recollect.

9. Q. Were you ever in his employ?
A. Yes, sir.
10. Q. When?
A. It is about six years since I first worked for him, and about eighteen months to two years since I left him.
11. Q. In what capacity were you employed by Mr. Jennings?
A. In working a lace-machine.
12. Q. How many lace-machines did Mr. Jennings have in operation when you first came to him?
A. He had eight machines; there were four called Lever's machines, and four warp-machines.
13. Q. How many Lever's machines had he when you left him?
A. Well, I couldn't say exact. I should say fourteen or fifteen.
14. Q. How many warp-machines?
A. I should guess ten or twelve.
15. Q. Do you know from whom he obtained the Lever's lace-machines, which he added while you were with him?
A. From me; one or two, I believe.
16. Q. Do you know from whom he obtained the others?
A. He obtained some from my brother.
17. Q. When did he obtain the two Lever's lace-machines from you?
A. He obtained one in 1869—July. I couldn't say exactly when he bought the other.
18. Q. Please relate the circumstances connected with the purchase of that machine from you by Mr. Jennings in July, 1869; that is to say, whence you obtained the machine, and under what arrangements, if any, the same was sold to Mr. Jennings.
(Objected to as irrelevant and immaterial.)
A. I was to import this machine, and get it to work, and if it suited Mr. Jennings he was to have the preference to buying it. I got it from my brother.
19. Q. When did you import that machine from your brother?
(Same objection.)
A. July, 1869.
20. Q. What did you do with it immediately after receiving it?
(Same objection.)
A. Cleaned it and put it up, and got it to work.
21. Q. Put it up where?
(Same objection.)
A. In Barclay street. I put it up in Mr. Jennings' shop; he gave me shop-room for it.
223 22. Q. How long after you put it up in Mr. Jennings' shop did he take possession of it?
(Same objection.)
A. Well, probably three or four weeks.
23. Q. Do you know in what steamer that machine was imported?
(Same objection.)
A. I believe it was on the City of London. I wouldn't be certain; it was on the Inman line.
24. Q. Was it imported alone, or was there any other merchandise in the same lot; and, if so, what?
(Same objection.)
A. Some silk.
25. Q. Do you know what value was mentioned in the invoice for the machine?
(Objected to as irrelevant and immaterial and incompetent, unless the

invoice is shown to be lost, or out of the possession of the defendant or the witness.)

A. £15, I believe.

26. Q. Did you order that machine from your brother, or did Mr. Jennings?

(Objected to as immaterial and irrelevant, and because the question is leading, and because the witness has already fully answered on that point.)

A. Me, myself, sir.

27. Q. What did you write to your brother, when ordering that machine, in relation to it?

(Objected to as incompetent, irrelevant, and immaterial.)

224 A. I wrote to him to send me the machine, a good one, as cheap as he could, and some silk at the same time.

28. Q. What did you write him regarding your future intentions with the machine?

(Same objections as to the last question.)

A. I wrote to him either to work it myself, or sell it, which I thought would be the best plan.

29. Q. Did you write him whom you expected to sell it to?

(Same objections.)

A. I told Mr. Jennings I was going to write for the machine, and I would give him the preference to it.

30. Q. Is that what you wrote to your brother?

(Same objections, and as leading.)

A. Yes, sir.

31. Q. Do you know whether or not bonds were given for that machine in the custom-house; and, if so, who by?

(Objected to as irrelevant and immaterial.)

A. Mr. Jennings.

And in answer to cross-examination, the witness deposes and says:

32. X Q. Did you obtain an abatement of the duties in whole or in part on that machine which you say you imported?

(Objected to as immaterial, and not cross-examination.)

A. Obtain an abatement in what way? What do you mean?

225 33. X. Q. I mean an abatement or remission in whole or in part of the custom-house duties.

(Same objection.)

A. I received no abatement at all, sir.

JOHN ROBINSON.

Subscribed and sworn to this 19th day of August, 1873.

JOHN A. SHIELDS,
Examiner.

226 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-four:

Present: The honorable Samuel Blatchford, circuit judge.

JOSEPH DALTON
vs.
A. G. JENNINGS. } In equity.

The above cause coming on for final hearing upon pleadings and proofs—

Mr. John Van Santvoord is heard in behalf of complainant.

Mr. A. V. Briesen is heard in behalf of the defendant.
Mr. Van Santvoord is heard in reply.
Curia advisari vult.

227 U. S. circuit court.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

BLATCHFORD, J.:

This suit is brought on letters-patent granted to the plaintiff March 5th, 1872, for an "Improvement in ladies' hair-nets." The specification says: "This invention relates to a net composed of two or more sets of meshes, each formed from different-sized thread, they being combined in a manner too fully described hereafter to need preliminary description. In the drawing, the letter A designates a hair-net which is composed of meshes, *a b*, formed from different-sized thread. The meshes *a* are formed of coarse threads, and they are of considerable width, so that a net formed of these meshes alone, when placed on the head, would permit the short hair to protrude through it, and it is therefore desirable to partially fill up these meshes by the secondary meshes, *b*. These secondary meshes are, by preference, made of very fine silk threads, so that the same are invisible when the net is worn, and at the same time, by these secondary meshes, the hairs are effectually held down. The meshes
228 *b*, (when an auxiliary set is used,) are attached to the meshes *a* in the middle of their bars; and, when two or more sets are introduced, they are placed equidistant, or nearly so; and the two sets of meshes—that is, the main set, *a*, and auxiliary set or sets, *b*—are so formed and connected with each other that either set can be entirely broken away without destroying the other. If the fine meshes, or any of the same, are torn, therefore, each torn mesh can be cut out without destroying the main fabric. The meshes *a*, as well as the meshes *b*, are by preference made of double strands, which pass through each other, as shown in Fig. 2, they being fabricated in a manner well known to lace-manufacturers; but I do not confine myself to the precise method of forming the meshes. They may in some cases be composed of three or more strands, united by tying, in any manner, at the ties, and of varying qualities and color of thread. The auxiliary meshes, when more than one set is used, may be arranged at acute angles to the main meshes, and may of preference be grouped together." The claim is: "A
229 head or hair-net, composed of a main set of meshes fabricated of coarse thread, combined with an auxiliary set or sets of meshes fabricated of fine thread, substantially as described." There are six figures of drawings: Fig. 1 is a top or plan view of the patented net, and Fig. 2 an enlarged view of a few meshes of it, showing the manner in which the net is formed. Fig. 1 shows squares, the outer edges of which are of large thread, and within each one of those squares are four squares, equal in size to each other, formed by the running of small threads parallel with the large threads, there being one small thread equidistant between every two of the large threads. Fig. 3 shows a like construction with three small threads in the space between every two of the large threads, and dividing equally such space. Fig. 4 shows a like construction with three small threads in the space between every two of the large threads, and dividing equally such space. Fig. 5 shows

a like construction with four small threads in the space between every two of the large threads and dividing equally such space. Fig. 6 shows squares the outer edges of which are of large thread, and two small threads crossing each other in each of such squares, but running through opposite corners of such squares.

It is very evident that the inventor starts with a net formed of
230 large squares by large threads, and then proceeds to partially fill up the large squares by crossing the large squares with finer threads. The idea of the finer threads is to keep short hairs from protruding through the large squares, and he says he prefers to have the finer threads so fine as to be invisible. The term of the specification and claim show that the inventor was to have the claim cover broadly a head or hair net composed of a main set of meshes fabricated of coarse thread, combined with an auxiliary set or sets of meshes fabricated of fine thread, without reference to the degree of fineness of the finer threads, and without reference to the manner of tying the finer threads to the coarse threads. The history of the steps which led to the making by the inventor of the net described in the patent, shows that he started with a net of large squares made by large threads, and filled up partially the large squares by crossings of finer threads. But the net thus arrived at was not a different net from what would have resulted if he had taken a net of small squares, sufficient small to keep short
231 hairs from protruding, such small squares being formed by fine threads, and all the threads of the net being of uniform size, and had substituted for each alternate fine thread, in both directions, a coarse thread, so as to arrive at a net like the patented net. Now, such a head or hair net of small squares, sufficiently small to keep short hairs from protruding, such small squares being formed by threads which were so small as to be entitled to be called fine threads, and were, at a certain and reasonable distance away, invisible, all the threads of the net being of uniform size, existed prior to the plaintiff's invention. It is defendant's Exhibit No. 10. In such a net, to substitute for each alternate fine thread, in both directions, a coarse thread, cannot be the production of a new article of manufacture. Such substitution produces the patented net. It may be new as a design, and may be entitled to be patented as a design, but it is not a new article of manufacture. The specification sets forth, as the advantages of the patented net, only the preventing of the protruding of short hairs and the invisibility of the fine threads. But any person had a right to make
232 defendant's Exhibit No. 10 of as fine threads as should be desirable, and to make it of uniform finer threads or of uniform coarser threads would involve no invention. As it stands, it will prevent short hairs from protruding. The substitution of alternate coarse threads in it for the fine threads has no effect one way or the other on the protruding of short hairs, or on the invisibility of the fine threads. No point of advantage, as between the patented net and defendant's Exhibit No. 10, is or can be suggested, except as to mere ornament, or taste, or outline, in pleasing the eye. The fabrics, as to utility, structure, inherent qualities, and mode of operation in use, are the same. The patented net, in view of the former net, has no patentability if the claim of the patent is to be continued in the broad manner before suggested.

If the claim to sustain it in view of the former net is to be limited to a claim to the continuation of the two sets of threads when they are so connected with each other that either set can be entirely broken away without destroying the other, then the defendant has not in-
233 fringed. The defendant's net, although it has a series of finer

threads crossing each other between the coarse threads, so as to prevent short hair from protruding, does not have its threads so connected that either set can be entirely broken away without destroying the other.

The bill must be dismissed with costs.

J. VAN SANTVOORD,
For the Plaintiff.
A. V. BRIESEN,
For the Defendant.

(Indorsed:) U. S. circuit court. Joseph Dalton vs. Abraham G. Jennings. Decision, May 21, 1874. Filed May 21st, 1874.

234 United States circuit court, southern district of New York. In equity.

JOSEPH DALTON
vs.
A. G. JENNINGS.

This cause having come on to be heard upon the bill of complaint herein, the answer thereto of the defendant, Abraham G. Jennings, the replication of the complainant to such answer, and the proof, oral, documentary, and written, taken and filed in said cause, and having been argued by counsel for the respective parties:

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows, viz, that the complainant's said bill of complaint be, and the same hereby is, dismissed with costs to the defendant to be taxed.

(Signed) SAM'L BLATCHFORD.

235 (Endorsed:) U. S. circuit court, southern district N. Y. J. Dalton vs. A. J. Jennings. In equity. Decree dismissing bill of complaint, with costs to defendant. A. V. Briesen, for defendant. Filed May 22, 1874.

236 Circuit court U. S., southern district of New York. In equity.

JOSEPH DALTON
agt.
ABRAHAM G. JENNINGS.

CITY & COUNTY & STATE OF NEW YORK,
Southern District of New York, ss:

Joseph Dalton, being duly sworn, deposes and says that he is the complainant above named; that this suit was brought for the infringement of a patent of the United States; that the said circuit court dismissed the bill of complaint herein on final hearing, and deponent is informed and believes that the decree of dismissal of said suit was entered May 22d, 1874; that deponent has been necessarily delayed and prevented from taking and perfecting his appeal from said decree, and is informed and believes that to-morrow, the 21st July, will be the last day for taking and perfecting his appeal from said decree; that deponent is informed and believes that there is no judge of said circuit or dis-

237 trict at present in said city of New York, who can or who has to sign or issue the necessary citation on appeal, or to approve the requisite bond on appeal in this case; that Hon. Lewis B. Woodruff, circuit judge of the 2nd circuit, is absent from the city, and is in Con-

necticut; that Hon. Samuel Blatchford, district judge of said district, is in Newport, Rhode Island; that Judge Benedict, of the eastern district, is at Saratoga; that Justice Hunt, of the Supreme Court, is supposed to be at Utica, and that deponent has not time to obtain their signatures and approval of said citation and bond in time to perfect his said appeal by to-morrow, the 21st July, which deponent is informed and believes is the last day allowed by law for that purpose, and that deponent's proposed boudsman is absent from this city to-day.

J. DALTON.

Subscribed and sworn to before me this 20th day of July, 1874.
[L. S.] W. HAUFF, (146.)
Notary Public.

238 Circuit court U. S., southern district of N. Y.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

On reading and filing the affidavit of Joseph Dalton, the above-named complainant, on motion of J. Van Santvoord, complainant's solicitor, it is ordered that said complainant have until August 1, 1874, to file the bond required on appeal from the decree entered herein to the Supreme Court, and to procure and file the citation on appeal and to perfect his appeal, and that meanwhile all proceedings on the decree entered in this cause be stayed, on the part of the defendant, provided that the complainant file in the office of the clerk of this court, within sixty days after the entering of the final decree herein, his petition for the appeal from said decree of this court to the Supreme Court of the United States.

(Signed) SAM'L BLATCHFORD.

239 (Endorsed:) Cir. court U. S., south. dis. N. Y. Joseph Dalton vs. Abraham G. Jennings. Aff't & order filed July 22, 1874.

240 Circuit court of the United States, southern district of New York. In equity.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

SOUTHERN DISTRICT OF NEW YORK,
City & County & State of New York, ss:

Joseph Dalton, being duly sworn, deposes and says, that he is the complainant in the above-entitled cause; that the said suit was brought by him for the infringement by defendant of complainants' letters-patent of the United States No. 124340; that the same was brought on for final hearing in April term, 1874, upon the pleadings and proofs therein; and that said court thereupon rendered a decree dismissing the bill of complaint therein, and that said decree was entered in the office of the clerk of said court on the 22d day of May, 1874; that deponent is advised by his counsel, J. Van Santvoord, of New York, and verily believes, that he has good and just reasons in law and in fact for appealing from said decree; that he determined to take such appeal to the Supreme Court of the United States, and on Monday, the

241 20th day of July instant, took measures to that end, when he was informed by his said counsel, and by Kenneth G. White, esq., the clerk of said court, that there was no judge in the city, nor accessible, to allow deponents' appeal and approve his bond and issue the citation in time to enable deponent to file the same by the 21st of July, which would be the last day of the sixty days allowed for that purpose, in order that such filing operate as a supersedeas or stay of proceedings under said decree; that deponent was informed by them and believes that Judge Woodruff was and is absent in Connecticut; that Judge Blatchford was and is at Newport, Rhode Island, and Judge Benedict was and is at Saratoga; that deponent was informed that Justice Swayne, of the Supreme Court, was in the city of New York, and he and his said counsel sought him on the 20th of July instant with success, and on the evening of the 21st of July instant his said counsel found said Justice Swayne, and applied to him, upon affidavit of the facts in the case, for a stay of ten days in this case, to enable deponent to make
242 and perfect his appeal; but his honor Justice Swayne decided that it would not be proper for him to make such order in the circuit of another justice; that one of the bondsmen or sureties whom deponent relies upon to sign his bond on said appeal is William Thompson, and that said Thompson has been absent from the city of New York where he resides, and has been for several days last past, as deponent is informed and believes, at the village of Sing Sing; that deponent filed his petition for an appeal from said decree to the said supreme court yesterday, July 21st, in the said clerk's office; that a levy and sale under execution by the marshal will work an injury to complainant's business and credit; that a stay of proceedings on the part of the defendant under said decree and an enlargement of the time for appealing for ten days will enable complainant to procure his bond and to perfect his appeal.

J. DALTON.

Subscribed and sworn to before me this 22' July, 1874.
[L. S.] JAS. E. CARPENTER,
Notary Public, New York City.

243 Circuit court of the United States, southern district of New York.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

On reading and filing the foregoing affidavit of Joseph Dalton, the complainant herein, it is hereby ordered that *that* the said complainant have until the third day of August next wherein to take and enter and perfect his appeal from the decree entered in this suit, and that all proceedings on the part of the defendant under said decree be stayed until that day; and that such appeal, if perfected by that day, operate as a supersedeas and stay execution and proceedings thereunder the same as if said appeal was perfected within sixty days after the entering of said decree.

July 23, 1874.
(Signed.) WARD HUNT,
Asso. Justice Sup. Ct. U. S.

(Endorsed:) Circuit court U. S. south. dist. N. Y. Joseph Dalton vs. Abm. G. Jennings. Afft. & order staying proceedings under decree. J. Van Santvoord, complt's. sol'r.

244 Service of a copy of the within hereby admitted.
July 25, 1874.

OLIVER FISKE,
U. S. Marshal.

Filed July 24, 1874.

245 Supreme Court of the United States.

JOSEPH DALTON, APPELLANT,
ag'st
ABRAHAM G. JENNINGS, APPELLEE.

To the honorable the Supreme Court of the United States:

The appeal of Joseph Dalton, the above-named complainant and appellant, respectfully showeth:

That upon the 8th day of October, 1872, the above-named complainant filed his bill in the circuit court of the United States for the southern district of New York against the above-named defendant and appellee, for the infringement by said defendant of complainant's letters-patent of the United States No. 124340, dated March 5, 1872, for an improvement in ladies' hair-nets, showing the issuing of said letters-patent on that day to the complainant, and the infringement thereof by the said defendant, and praying that the said defendant be restrained and enjoined from such infringement, and be compelled to account
246 for and pay to the complainant the gains and profits received by the defendant from such infringement, and the damages sustained by the complainant therefrom, to which bill the said defendant made answer, filed December 21, 1872, denying that the complainant was the first and original inventor of the improvement claimed in said patent, and averring that the said improvement was well known and in public use in the United States before the complainant invented the same, and the complainant filed his replication to said answer December 24, 1872, and both parties took proofs in said suit, and the said suit was brought on for final hearing before the said circuit court in April term, 1874, upon the pleadings and proofs therein, whereupon the said court, on such hearing, decided that said improvement was not patentable, and decreed that said bill be dismissed with costs to the defendant. That on the 22nd day of May, 1874, a final decree was made and pronounced in the cause, wherein it was in substance adjudged and decreed that the said bill of complaint be dismissed with costs to the defendant, to be taxed.

247 Wherefore, this appellant appeals from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed and a decree made sustaining the said patent, and granting the relief prayed for in said bill with costs, or such other decree as to the said Supreme Court shall seem just.

J. DALTON.

Dated, New York, July 21, 1874.

(Endorsed:) Supreme Court of the U. S. Joseph Dalton, ap-
248 pellant, vs. Abraham G. Jennings, appellee. Petition on appeal. Allowed July 29th, 1874. Samuel Blatchford, judge. Filed July 21, 1874.

249 Supreme Court of the United States.

JOSEPH DALTON
vs.
ABRAHAM G. JENNINGS.

Know all men by these presents that we, Joseph Dalton, of the city of New York, Louis Hasting, of the same place, are held and firmly bound unto Abraham G. Jennings, of Brooklyn, New York, in the sum of three hundred and eighty dollars, lawful money of the United States of America, to be paid to the said Abraham G. Jennings, his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated the twenty-eighth day of July, one thousand eight hundred and seventy-four. Whereas the above bounden Joseph Dalton hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of New York:

250 Now, therefore, the condition of this obligation is such that if the above-named Joseph Dalton shall prosecute his said appeal to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void.

J. DALTON.
LOUIS HASTING.

Sealed and delivered in presence of—
R. E. STILWELL,
U. S. Comm'r.

(Endorsed:) Supreme Court U. S. Joseph Dalton, appellant, vs. Abraham G. Jennings, appellee. Bond on appeal and justification. Approved July 29th, 1874. Samuel Blatchford, judge. Filed July 20th, 1874.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph Dalton, of N. Y. City, and Louis Hasting, of N. Y.
251 City, and , of , being severally duly sworn, depose and say, and each for himself saith, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

J. DALTON.
LOUIS HASTING.

Sworn to before me this 28th day of July, 1874.
R. E. STILWELL,
U. S. Comm'r.

252 Circuit court U. S., southern district of New York, in equity.

JOSEPH DALTON
ag't
A. G. JENNINGS.

Please take notice that upon the affidavit and stipulation, copies whereof are hereto annexed, a motion will be made before the judges,

or one of them, of the circuit court of the United States for the said district, at the court-house in the city of New York, No. 41 Chambers street, on Saturday, October 3d, 1874, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an order authorizing the clerk of this court to send to the Supreme Court of the United States all the exhibits and proofs which were filed by either party and used on the final hearing thereon, along with the record on the appeal which may be taken herein, and that the clerk request the clerk of the Supreme Court to return such exhibits and proofs to the office of the clerk of this court on the decision of such appeal.

Dated New York, Oct. 1, 1814.

J. VAN SANTVOORD,
Compl't's Sol'r.

To AV. BRIERSON, Esq.,
Def't's Sol'r.

253 Circuit court of the United States, southern district of New York
In equity.

JOSEPH DALTON *ag't* A. G. JENNINGS.

CITY & COUNTY OF NEW YORK,
Southern District of New York, ss:

John Van Santvoord, being duly sworn, deposes and says that this cause was decided on final hearing in this court, and that steps have been taken for appealing the same to the Supreme Court; that deponent is informed and believes that it is necessary that the exhibits and proofs of the parties therein be sent to the Supreme Court with the record; that deponent, on behalf of the complainant, Joseph Dalton, tendered to the solicitor for the defendant, A. V. Briersen, esq., the annexed stipulation, and requested him to sign the same, and said defendant's solicitor has this day refused to sign the same; that deponent is informed by the clerk of this court, Kenneth G. White, esq., that either a stipulation of the parties or an order of this court must
254 be obtained to enable him to send said exhibits and proofs to said Supreme Court with the record.

JOHN VAN SANTVOORD.

Subscribed and sworn to before me this first day of October, 1874.
R. E. STILWELL,
U. S. Com'r.

255 Supreme Court of the United States. In equity.

JOSEPH DALTON, APPELLANT, *vs.* ABRAHAM G. JENNINGS, APPELLEE.

It is hereby stipulated that the exhibits and proofs put in evidence in the above action in the circuit court of the United States for the southern district of New York, by the complainant and defendant, be sent on to the Supreme Court in the appeal taken herein, and that the same be returned to the clerk of said circuit court after the final determination of said appeal.

New York, Aug't 12, 1874.

J. DALTON.

CITY, COUNTY, AND STATE OF NEW YORK,
Southern District of New York:

Charles Wahlers, being duly sworn, deposes and says that he is clerk for Van Santvoord and Hauff, solicitors of patents, No. 41, Park Row, in said city. That on the 1st day of October, instant, he served a
256 notice, of which the within is a copy, together with copies of the foregoing affidavit and stipulation, on A. V. Briersen, esq., solicitor for the defendant in the above-entitled action, by delivering the same to said Briersen personally.

CHARLES WAHLERS.

Subscribed and sworn to before me this 2nd day of October, 1874.
W. HAUFF, (146)
Notary Public.

(Endorsed:) Sup. Court of the U. S. Joseph Dalton, appellant, vs. Abraham G. Jennings, appellee. Stipulation, affidavit, and notice as to transferring exhibits & proofs. J. Van Santvoord, compl't's sol'r. Filed Oct. 5, 1874.

257 Circuit court U. S., southern district of New York. In equity.

JOSEPH DALTON *ag't* A. G. JENNINGS.

Upon reading and filing the affidavit of J. Van Santvoord and notice of motion and proof of service thereof on defendant's solicitor, asking for an order that the exhibits and proofs used on final hearing herein be sent to the Supreme Court with the record, if an appeal be taken from the decree rendered herein, on motion of J. Van Santvoord, complainant's solicitor, it is hereby ordered that the exhibits and proofs of both parties (other than the written or printed evidence) used on final hearing herein be sent by the clerk to the Supreme Court on any appeal which may be taken from the decree herein, and that the Clerk of the Supreme Court be requested to return the same to the clerk of this court after the decision of such appeal.

(Signed) SAM'L BLATCHFORD.

258 (Endorsed:) Cir. court U. S., south. dis't N. Y. Joseph Dalton vs. A. G. Jennings. Order to let exhibits be sent to Sup. Court. Filed Oct. 5, 1874.

259 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York.

To Abraham G. Jennings:

Whereas Joseph Dalton has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you, the said Abraham G. Jennings, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington on the second Monday of October, 1874, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and seventy-four.

SAMUEL BLATCHFORD.

260 CITY AND COUNTY AND STATE OF NEW YORK,
Southern District of New York, ss:

Charles Wahlers, being duly sworn, deposeth and saith that on the thirtieth day of July, 1874, he served a copy of the within citation upon A. V. Briesen, esq., solicitor and of counsel for the within-named defendant, Abraham G. Jennings, by delivering said copy to him personally at his office in said city, and that at the same time he also delivered to said Briesen a copy of the petition of appeal and of the allowance endorsed thereon, filed with the clerk of the circuit court of the United States in and for the said district.

CHAS. WAHLERS.

Subscribed and sworn to before me this 30th day of July, 1874.

W. HAUFF,
Notary Public.

(Endorsed:) Supreme Court U. S. Joseph Dalton, appellant,
261 vs. Abraham G. Jennings, appellee. Citation. Filed July 21, 1874.

262 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 261 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Joseph Dalton against A. G. Jennings, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifth day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

(Indorsement on cover:) No. 132. Joseph Dalton, plaintiff in error, vs. Abraham G. Jennings. S. New York, C. C. U. S. Filed 13th October, 1874.

REC. 132—9

U. S. Supreme Court.

JOSEPH DALTON,
Appellant,

vs.

ABRAHAM G. JENNINGS,
Appellee.

No. 132.

BRIEF FOR APPELLANT.

J. VAN SANTVOORD,
For Appellant.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, CORNER FULTON STREET.
1876.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

U. S. Supreme Court.

JOSEPH DALTON,
Appellant,

vs.

ABRAHAM G. JENNINGS,
Appellee.

No. 132.

This is an appeal from a decree of the CIRCUIT COURT of the SECOND CIRCUIT, Southern District of New York, in a suit in equity.

The suit was brought for an infringement of *letters patent* No. 124,340, granted to the *appellant*, DALTON, March 5, 1872, for an *improvement in ladies' hair nets.*

The patent is printed at pages 25, 26 of the RECORD.

The bill of complaint was in the usual form, and was filed October 9, 1872.

The answer *denied the novelty* of *appellant's* invention, did *not deny the infringement*, but alleged that the defendant *had a right to make, use, and vend the alleged improvement*, and

alleged *that the defendant made his hair nets by a different method from that described in said letters patent.*

The case was heard on pleadings and proofs, and decided May 21, 1874.

The opinion of the court is printed in the RECORD at p. 120, and a decree pursuant to this opinion, dismissing *appellant's* bill with costs, was entered May 22, 1874.

The decree is printed at p. 122 of the RECORD.

ASSIGNMENT OF ERRORS.

The court below erred :

I.—In deciding that the patented improvement was not a new article of manufacture.

II.—In deciding that the patented improvement was not patentable because there existed prior to the *appellant's* invention a net of small squares, formed by fine threads of uniform size,—referring to the net marked Defendant's Exhibit No. 10.

III.—In deciding that the patented net and the net marked Defendant's Exhibit No. 10, are the same as to utility, structure, inherent qualities, and mode of operation in use.

IV.—In deciding that, in view of the net, Defendant's Exhibit No. 10, the patented net of *appellant* had no patentability, if the claim of *appellant's* patent be construed to cover the patented article broadly.

V.—In dismissing the bill of complaint, and in granting costs to the defendant.

VI.—In not deciding that appellant's patent was valid.

VII.—In not granting the relief prayed for in appellant's bill of complaint.

POINTS.

I.

Construction of Appellant's Patent.

The patentee states in the patent, in the preliminary part of the description, as follows :

" This invention relates to a net composed of two or more " sets of meshes, each formed from different sized threads, " they being combined in a manner too fully described here- " after to need preliminary description."

He then proceeds to describe his invention more particularly, as follows :

" In the drawing, the letter A designates a hair-net, which is " composed of two or more sets of meshes, each formed from " different sized threads. The meshes, *a*, are formed of coarse " threads, and they are of considerable width, so that a net " formed of these meshes alone, when placed on the head, " would permit the short hair to protrude through it, and it is, " therefore, desirable to partially fill up these meshes by the " secondary meshes, *b*. These secondary meshes are by " preference made of very fine silk thread, so that the same are " invisible when the net is worn, and, at the same time, by " these secondary meshes, the hairs are effectually held down."

The patentee further specifies, that when two or more auxiliary or intermediate sets of meshes are introduced in the coarse meshes or squares, *a*, they are placed therein equi-distant, or nearly so, but when only one auxiliary set, *b*, is used in the coarse mesh or square, *a*, it is attached to the mesh *a*, in the middle of its bars, the words in the specification, which are placed in brackets (when an auxiliary set is used), meaning, evidently, *when one auxiliary set is used*, as is plain from the context, and from the following phrases in the same sentence, namely, " *and when two or more sets are introduced* ;" " *and the two sets of meshes, that is, the main set, a, and auxiliary set or*

sets, b,"—and from the phraseology of the sentence, next preceding the claim, and from the claim itself.

The patentee further specifies that he forms and connects the main set, *a*, and the auxiliary set or sets, with each other, so that either set can be entirely broken away without destroying the other.

He further specifies, that his invention is fabricated in a manner well known to lace manufacturers, and says that he does not confine himself "to the precise method of forming the "meshes. They may, in some cases, be composed of three or "more strands, united by tying, in any manner, at the ties, "and of varying qualities and color of thread."

He also says, that the auxiliary set or sets may be arranged at acute angles, to the main meshes, or may be grouped together.

He claims his invention in the following words, namely :—

"A head or hair net composed of a main set of meshes, "fabricated of coarse thread, combined with an auxiliary set "or sets of meshes fabricated of fine thread, substantially as "described."

(*a.*) It is plain from the specification and claim, that the patentee does not claim a particular process or methed of combining the large meshes fabricated of coarse thread, with the auxiliary intermediate meshes of fine thread. He describes one method, namely, so forming and connecting the two sets of meshes that either can be cut away without destroying the other, but does not restrict his combination to the limits of that method.

(*b.*) Neither does he limit himself to a particular shape of the auxiliary intermediate meshes; they may be rectangular or diagonal with respect to the bars or pillars of the coarse main meshes of the net.

His invention, therefore, does not consist of a shape or outline, and could not therefore be patented as a design.

(c.) His invention is properly described, in the phraseology of § 4,886 of the Patent Law, Rev. Stat., p. 954, *as a new and useful improvement of a manufacture.*

The manufacture which is improved is net, so called. The same is a well known fabric, composed of a series of open meshes or squares, of uniform size throughout the same piece of the fabric, each mesh or square being composed of thread of the same size.

It is clear from the specification, that the particular invention described therein is *an improvement on that fabric;* and that the improved fabric is considered by the inventor to be particularly applicable to use, as a lady's head or hair net. He has accordingly claimed the new fabric, which composes his invention, as an improved head or hair net; although it is evident that if the fabric is new, he need not have so limited his claim, but could have claimed it simply as an improvement on the manufactured article or net fabric.

The explanation of the reference in the claim to the specific use which was to be made of the invention is, that the invention was conceived of in connection with the articles known as hair nets; and that it is especially adapted to be used for ladies' hair nets.

THE THING PATENTED, therefore, is an improved head or hair net, or fabric, of the character described, that is to say, having a main set of meshes, forming the net proper, and within said main meshes an auxiliary set of other meshes, fabricated of finer thread than the main set of meshes, in such a manner that the auxiliary inner meshes are practically invisible when the net is worn, while they, at the same time, hold down the straggling hairs which protrude and intervene between the pillars of the main meshes.

The appellant did not make a net composed of double thicknesses of net laid one over the other, but he made a single net fabric, which combined, in itself, the advantages of two kinds of hair net, with the lightness and thinness of the single net fabric. It appeared to be a net of large meshes, of coarse thread, but it was not that only—it had within the coarse meshes and incorporated with them, so as to form one fabric, a series of fine thread meshes, which are practically invisible

along side the larger pillars of the net, but which are also practically useful in enabling the wearer to wear a large mesh net without having straggling or short hairs protrude through the meshes.

2. Is the thing patented, novel?

The learned judge, who decided this case in the court below, conceded, by implication, that the numerous specimens of lace, or net fabric, produced by the defendant as anticipations of the appellant's invention, were not anticipations, and were not the same as appellant's new fabric, for his honor laid them all aside as insufficient to defeat the patent, and decided that as between appellant's new net or fabric, and Defendant's Exhibit No. 10, which consists of a net or lace fabric, of small squares of fine thread, the squares and threads being of the same size throughout, there was no patentable invention.

The learned judge reaches that conclusion by the following course of reasoning, namely:

"The history of the steps which led to the making by the "inventor of the net described in the patent, shows that he "started with a net of large squares made by large threads, "and filled up, partially, the large squares by crossings of finer "threads. But the net thus arrived at was not a different net "from what would have resulted if he had taken a net of "small squares, sufficiently small to keep short hairs from "protruding, such small squares being formed by fine threads, "and all the threads of the net being of uniform size, and had "*substituted for each alternate* fine thread, in both directions, "a coarse thread, so as to arrive at a net like the patented net. "Now, such a head or hair net of small squares, sufficiently "small to keep short hairs from protruding, such small squares "being formed by threads which were so small as to be entitled "to be called fine threads, and were, at a certain and reasonable "distance away, invisible, *all the threads of the net being of uni-*"*form size*, existed prior to the plaintiff's invention. It is De-"fendant's Exhibit No. 10. In such a net, to substitute for "each alternate fine thread, in both directions, a coarse thread,

" cannot be the production of a new article of manufacture. " Such substitution produces the patented net. It may be new " as a design, and may be entitled to be patented as a design, " but it is not a new article of manufacture. * * * No point " of advantage, as between the patented net and Defendant's " Exhibit No. 10 is or can be suggested, except as to mere " ornament, in taste, or outline in pleasing the eye. The " fabrics as to utility, structure, inherent qualities, and mode " of operation in use are the same."

The learned judge has, in this opinion, substantially conceded that the net, Defendant's Exhibit No. 10 is *not the appellant's patented net*, and that to make it to be the same as appellant's net, it is necessary to substitute " for each alternate fine " thread, in both directions, a coarse thread, so as to arrrive at " a net like the patented net."

On the point of novelty of invention, therefore, he ought to have sustained the appellant's bill of complaint.

The learned judge very justly says, that by *changing* Defendant's Exhibit No. 10 in the manner suggested by him, one would " arrive at a net like the patented net."

The converse of the proposition is certainly true, that unless that change is made, one does not arrive at a net like the patented net, and it follows that Defendant's Exhibit No. 10 is not like the patented net.

If one changes the net, Defendant's Exhibit No. 10, in the manner suggested by the court below, that is to say, *substituting for each alternate fine thread, in both directions, a coarse thread, and taking out the fine thread*, there results a combination of double net fabric like the patented net; the coarse threads which are substituted for the alternate fine threads, in both directions, compose, then, a net or lace fabric which was not in the fabric before.

A net like Defendant's, Exhibit No. 10, cannot be changed by adding a coarse thread for each alternate fine thread, without making the net clumsy and unsightly and unsaleable. That

would be to place a thick gimping or embroidering thread on one side of the net, Exhibit 10, like that on the spotted net fabric, Defendant's Exhibit 2, producing a fabric totally different from the appellant's hair net, which is really a net of a single thickness of net fabric, light, sightly, marketable and useful, having these essential elements, adaptability, ornamental appearance, utility and cheapness.

3. Is the Thing Patented Useful?

The court below undoubtedly intended to imply that the appellant's invention might be new as a design, and yet not possess that element of usefulness which is necessary to confer patentability upon a novel thing.

It is respectfully suggested on this point that the law does not require that an invention shall create a new use over things analogous to it in order to sustain the character of patentability.

This court held in Smith *vs.* Nichols, 21 Wall., 112, that "it is the invention of what is new, and not the arrival at com-"parative superiority or greater excellence in that which was "already known, which the law protects as exclusive property, "and which it secures by patent."

Head or hair nets of fine thread throughout and of fine meshes or squares throughout were known before the appellant made his invention, and such nets held down straggling hairs effectually, and so would a muslin night cap. But a coarse mesh net fabric would not prevent short, stumpy or straggling hairs from protruding through the meshes, and the appellant, who is a lace manufacturer, observing that defect in large mesh nets which had been much in vogue, came to his idea of running a small invisible silk thread across each mesh at right angles so as to confine the hair effectually, and yet retain the appearance of a large mesh net.

The appellant testifies on that point as follows: (See p. 62 of Record.)

"Q. 2. What do you manufacture?"

"A. Knitting machines, and lace goods and hosiery."

"Q. 3. How long have you been acquainted with lace goods?"

"A. I think about thirty-eight years."

"Q. 7. State the circumstances which led you to make the invention set forth in said patent, and the time when you made such invention?"

"A. There are two circumstances; the first, large mesh hair nets had been very much in vogue; large mesh hair nets, the meshes of which are about one inch square; the next call was for about one quarter of that size; so, having a large stock on hand of the old-fashioned mesh, of the largest size, so I had to put my wits to work in order to contrive some means whereby to make them saleable; I went to Miss Brabson, my cutter-out, she being a hand hair net manufacturer, so I asked her if she thought it would pay to run a small invisible silk thread across each mesh at right angles; she said, "I think not, Mr. Dalton; therefore I dismissed the idea with her; I was in a store above Canal street, about the same time, on the west side of Broadway; in the meantime a small lady came in; she had on one of those coarse large mesh hair nets just spoken of, and most of the small short or stump hairs protruded through the large meshes in great profusion, and so rendered that part of the hair very uncomely, and therefore forced the idea upon my mind that such unuseful nets could not be in demand much longer."

It is clear that the inventor proposed to accomplish and did accomplish a useful object by his invention. That object was to produce a large mesh net, which while it appeared to be only such, had in fact within the walls of the larger meshes a series of smaller meshes, whose office was to hold down short, stumpy and straggling hairs. This was in effect accomplished without bringing the smaller meshes into observation, because the coarse meshes would first attract the eye and the finer meshes of finer thread within them would escape the eye, and the inventor properly described them as *invisible*.

The illusion to the eye which the inventor made use of is a

familiar one. One example of this character is the interesting one of interposing a lighted candle between the observer and the sun, when the light flame of the candle seems to him to become a dark place upon the sun's disk. So, upon observing from a distance two objects near to each other of the same color but of unequal magnitude, the larger object will impress itself upon the eye to the exclusion of the smaller.

The inventor had a definite object in view, and he devised a practicable means for effecting it.

His invention was successful. The witness Lemuel F. Holmes, salesman for Peake, Opdyke & Co., of Broadway, New York, testifies (p. 23 of Record), as follows:

Q. 10. State to what extent hair nets, like Exhibit E, have been sold in this country, so far as your knowledge extends?

A. Well, at the time they were first introduced, they seemed to be liked, and sold better than any we had in our stock of a corresponding price.

4.—The History and Date of the Invention.

The inventor, the appellant here, Joseph Dalton, is a practical lacemaker from boyhood (Record, p. 62), and came to this country from England, in 1847.

He was led to make his invention by the circumstances narrated by him in his answer 7.

He proceeds in that same answer as follows:

"So I returned to my shop in Brooklyn, E. D., with the full intention of making an intermediate fine invisible mesh, interwoven between the large ones, either by hand or machine, if possible. I went to my workmen, Mr. Williamson and Mr. Windley, and described to them my idea of getting up a new fabric of this hair net. I first asked Mr. Williamson, several days before his warp was off, whether he could produce this on his machine—that is, a Leaver's lace machine. I cannot remember the reply he gave me. Then I went to Mr. Windley, working on another Leaver's lace machine, and talked with him about it. Then, a short time afterward, he went to No. 1

machine, the one operated by Mr. Williamson, and held quite a little conversation with Mr. Williamson about the same fabric, and they finally agreed to give it a trial between them as soon as circumstances would permit; and these circumstances were based on the grounds, I presume, to prevent both a loss of time and silk, the warp being about off at that time; and it is the only time we can try anything new without much inconvenience. I mean the time when the warp is off. This was about the middle of July, 1869.

Q. 8. State what, if anything, Windley and Williamson did with regard to the fabric you discribed to them?

A. Witness asks, about making the fabric?

Q. 9. Yes?

A. They took off their old cards—that is, Jacquards—and either remodeled them or put up new ones, I cannot say which. What I mean by remodeling is punching different holes into the cards, so that the needles would penetrate these new holes, and thereby give a different traverse motion both to the old and the new bars to which they applied.

Q. 10. How did they succeed in this attempt?

A. Very indifferently."

The difficulty experienced by these workmen arose from their want of experience in punching the cards of the Jacquard machinery, by which Leaver's lace machines are operated.

See Dalton's answers, 9, 10, p. 63, and Windley's answers, 67 to 83, pp. 45–46.

He sketched his invention in his account book, and wrote under the sketch a memorandum that he had spoken about his invention to Windley and Williamson.

Dalton's answers, 18 to 22, Record, p. 64.

Mr. Dalton then proceeded to make by hand a piece of hair-net (Exhibit S), containing his invention, intending to apply for a patent therefor. This piece he took to his patent solicitors, and left it and a written description with them. Dalton's deposition, pp. 65, 66, answers 24 to 31. See Mr. Hauff's deposition, p. 73, answers 3 to 10.

After this, and before he applied for his patent, he went to

England, in November, 1869, to take over a sick daughter, intending, also, to get the design for the Jacquards of his new net drafted while in England. Dalton's deposition, p. 65, ans. 27; p. 66, ans. 32; p. 68, ans. 62.

During the trip of 1869 to England, he did not get time, owing to the sickness of his daughter, to attend to this business, and, therefore, he made another trip to England in 1870, for this express purpose, and had cards punched, and bought a lace machine and had it tried before it was shipped to him. He had the machine sent over to him in charge of an experienced lace maker, James Newbold, who came over to set it up and put it at work, being the same workman who was employed in England in getting the machine in working order. See Newbold's dep., Record, p. 31, ans. 5 to 8. The machine was sent over to Mr. Dalton, arriving here in June, 1871, and was at once put up and set to work. In September, 1871, Mr. Dalton introduced his new net to the market, and in October, 1871, he filed his application for a patent. Dalton's deposition, pp. 66, 67, ans. 33 to 38.

The issue of his patent was delayed by an interference with an application filed after his, but the other applicant abandoned his application after Mr. Dalton filed his "Preliminary Statement," a copy of which defendant has put in as Exhibit No. 5, and the patent issued to Mr. Dalton, March 5, 1872.

The new net was popular (Holmes' deposition, p. 23, ans. 10). It "seemed to be liked, and sold better than any we had in our stock of a corresponding price."

In October, 1871, after Mr. Dalton introduced his new net into the market, the defendant procured one of them, and made an effort to prevent the issue of Mr. Dalton's patent by writing a letter on the subject to the Commissioner of Patents. Jenning's deposition, ans. 144, 147, 148, p. 107 of Record.

5—The Infringement.

The infringement by the appellee, Jennings, is proven by the depositions of several witnesses.

Wahler's ans. 3 to 12, pp. 11, 12; bought a package of nets marked Complainant's Exhibit C. See bill of sale, Ext. D., p. 27 of Record.

Larrigan, Record p. 17, ans. 10, recognizes Exhibit C as Jennings' net. See p. 20, ans. 51.

Holmes, p. 22, ans. 4.

Laidlaw, p. 23, ans. 3 and 4. See bill of sale, Ext. G, p. 78 of Record.

6—Was the Appellant's Invention new at the time he made it.

1. The defendant, the *appellee* here, relies upon the three English Design Patents to Pratt, Hurst & Co., marked Defts. Exhibit 3.

(Offered in evidence on p. 78 of Record.)

But the earliest of these patents is dated May 22, 1871, which is nearly two years after Mr. Dalton had made the piece of hair net, Exhibit S, and described his invention to Windley, to Miss Brabson, and to Williamson, and as much as one year and six or eight months after he had described his invention to Mr. Hauff, and left with him the net and written description, Exhibit S. See Mr. Hauff's dep., Record, p. 73, 74, 75, answers 3, 4, 5, 8, 22, 23, 29.

The Patent Law, § 4,886, Rev. Stat., p. 954, requires that a foreign or domestic patent or publication, in order to defeat an American patent, must be of a *date* before the patented invention or discovery *was made*. These English patents, therefore, do not anticipate the appellant's invention, and it is immaterial to enquire whether they show the same invention or not, but if they are of the same invention, they show that that invention was new and patentable in the great lace producing country of England, and was unknown to the lace makers there.

The defendant also relies on Thomas Hooton, a lace weaver, to prove that Dalton's invention was old, but Hooton (Record,

p. 79, ans. 9, 10, 11, 12), swears that he first commenced to make a net like Exhibit 6 in June or July, 1871.

This is about two years a ter Mr. Dalton made his invention.

The spotted net, Exhibit 2, which defendant introduces by this witness, is an old fabric, familiarly known as "Spotted net." It is an ordinary kind of figured lace, and has no bearing upon the question here in controversy. In making the spotted net, Exhibit 2, a separate thread, which may be a thick thread, is used to form the spot: See deposition of defendant's witness, Hall, Record, p. 86, ans. 17, 19.

Osborne, another of defendant's witnesses, p. 81, ans. 7, 8, 9, swears that he saw nets like Exhibits 7 and 8 first in June, 1871, in Brooklyn, made by Walter and John Dexter, workmen in Jennings' employment.

This date is *about two years after Mr. Dalton had invented his net.*

This witness swears that he has worked for the defendant since June, 1868, and that the *first time* he ever *saw a fabric of the description of defendant's hair net, Exhibit C, made in a piece was in the commencement of* 1872, see his answer 10, as follows:

"Q. 10. Please examine the net marked Complainant's Exhibit C, and state whether you saw a fabric of that description before; and if so, when first and where?

A. The first time I saw it, I believe, was in the commencement of 1872, made in a piece; but I made a sample myself in the fall of 1869, with thick and thin thread, and black and white thread, from a design Mr. Jennings had sent from England."

Even if Osborne did make a sample himself from such a design in the fall of 1869, it does not help the defendant, for Mr. Dalton had made his invention already, and had, in June or July, 1869, described it to Miss Brabson and to Windley and Williamson, and had made several pieces of hair net like Exhibit S.

This Exhibit S is a part of the model of appellant's patent, certified to by the Commissioner of Patents, see Certificate Exbibit K, Record, p. 76.

Defendant's witness, Williamson, confirms Mr. Dalton's tes-

timony in every important particular. Williamson admits that he and Windley were trying to make a new head-net for Mr. Dalton. Record, p. 87, answers 12, 17 to 20; also Record, p. 91, answers 86 to 94.

Williamson swears, Record, p. 90, ans. 77 to 79, that it would be new in nets to work a thick and thin thread, and in ans. 80 to 84 he describes the attempts he and Windley made to produce the new net.

Williamson had been a lacemaker between thirty and forty years, Record, p. 95, ans. 169, and therefore had ample opportunity to know if the Dalton net had ever been produced before.

The defendant, Jennings, swears that he got a draft of Mr. Dalton's net from one Matthew Robinson in England in July, 1869, and *laid it aside for future use*, and began in the summer and fall of 1871 to make and sell it; see Record, p. 96, ans. 6 to 15.

Jennings evidently thought the net was novel, or he would not have laid the draft aside for future use.

Jennings, in his answers, 53, 54 and 64 to 81, and 115 to 130, maintains that he knows he received the Matthew Robinson draft, Exhibit 9 (with the sample which he does not produce), in July, 1869, because he imported, at the port of New York, a Leavers' lace machine, which arrived at the same time. He is not, however, able or willing to produce his invoice of that importation, or any book entry relating to the same. He makes the astonishing declaration that he destroys his books and vouchers (Ans. 105, 106, 116, 121) as a general thing, and yet (Ans. 112 to 114) he employed, in the years 1869 and 1871, about fifty hands, and had a book-keeper (Ans. 107), and now (Ans. 125) keeps two business establishments.

But upon inquiry at the New York Custom House, we have ascertained that between May, 1869, and November, 1869, Jennings only made two importations, and those were October 5, 1869, old machines, and November 13, 1869, black luster sander-

See deposition of Van Arsdale, Record, p. 52, ans. 11 to 14.

The invoices of these two importations are in complainant's Exhibits Van Arsdale 1 to 5.

John Robinson was called by the defendant and testified (Record, p. 117, &c.,) that he imported a machine on his own account (ans. 18, 26, 27, 28), and sold it to Jennings.

The facts brought out by Van Arsdale, the Custom House clerk, and by John Robinson, show that Jennings did not tell the truth about his importation in July, 1869, and that he prevaricated about having received an invoice from Matthew Robinson at that time. The date at which he did receive machinery from Robinson was in October, 1869, and it does not help him, nor justify his assertions about an invoice and importations of a machine and silks in July, 1869, to prove that John Robinson imported a machine in July, which Jennings bought three or four weeks afterwards.

But even if Jennings did get from England a draft of a new net like Mr. Dalton's, in July, 1869, Mr. Dalton's invention was not anticipated thereby, because prior foreign knowledge or use does not invalidate any American patent (Parker *vs.* Stiles, 5 McLean, 61); and because Mr. Dalton's invention was original with himself, and was already made in June or July, 1869, and Dalton was the first to make, and actually produce in this country, a piece of net showing his invention (see his answer 24, Record. p. 65). In September 27, 1871, Dalton was selling his new net (Record, p. 67, ans. 36).

Jennings' witness, Osborne, swears that Jennings did not begin to make the new net until the commencement of 1872 (Record, p. 82, ans. 10), and Newbold, the weaver, whom Mr. Dalton brought from England to make the new net for him, testifies (Record, p. 31, ans. 10 to 14), that in the winter of 1872, a man in Jennings' employ, of the name of Good, or Goody, offered him $25, if Newbold would show him how to make the new net. Newbold was then working for Dalton. Goody came twice or three times Newbold says (Ans. 46 to 50 and 59 to 61), that Jennings told Goody if he could get on with that net he would find him employment; that they were trying, but could not get it on.

It is clear, from these circumstances, that Jennings did not attempt to make the newnet until Dalton was supplying the market.

Newbold swears (Record, pp. 30, 31, answers 1, 2 and 3) that he had worked in lace about fifty years, and that he came to this country in 1871, and that he never knew of such work as Mr. Dalton's net until he came to this country (see Record, pp. 37, 38, ans. 86 to 93, and p. 39, ans. 102.

Windley's Testimony, Record, pp. 49 to 51, ans, 119 to 146, shows that Mr. Dalton's net made quite a stir among other manufacturers when he introduced it, in the winter of 1872, and he also shows that the manufacture of nets by machinery in this country is comparatively a recent thing. Record, p. 48, ans. 112.

Appellant's witness, Marr, testifies, Record, p. 57: that he has been a lace manufacturer 30 years, and introduced the manufacture of lace by machinery into this country in 1861, and that he is the only manufacturer of lace machinery in the United States, and that he has built only two lace machines in this country, one in 1870 and one in 1873, and both for himself. He says :

"Q. 10. State what knowledge and experience, if any, you have had in the manufacture of ladies' hair nets?

A. I believe I was the first manufacturer in the United States; commenced to manufacture hair nets in 1864, and have continued to manufacture that kind of goods up to the present time.

Q. 11. State whether or not you have been accustomed in the course of your business to become acquainted with the different styles of ladies' hair nets placed in the market or brought out in the trade?

A. I have, sir.

Q. 12. Look at the hair nets, Complainant's Exhibit E, and at the complainant's Patent Exhibit A, and state whether or not any hair nets of the kind represented by such exhibit has been known to the lace making trade in this country or elsewhere, so far as you know, previous to said patent?

(Objected to as leading, suggestive and incompetent.)

A. No, sir; not that I know of.

Q. 18. Compare Exhibit 2 and Exhibit E, and state whether or not you find them to be the same or different from each other, and give your reasons for any opinion you may express.

(Objected to as leading and indefinite, it being clear that the two exhibits cannot be and are not the same.)

A. They are two entirely different fabrics produced on two entirely different classes of machinery. This Exhibit 2—I have seen this one twenty-two years ago—made it twenty-two years ago myself; the other fabric I have not seen until within the last three or four years; I am not sure which.

Q. 19. By what name was the fabric Exhibit 2 known in the trade?

A. It is known as dotted sleeve net, manufactured on the warp loom, one of the convenient articles in the trade.

Q. 20. You say of Exhibit E—the other fabric I have not seen until within the last three or four years, do you know who first brought it out?

A. I have always understood Mr. Dalton to be the originator of it.

Q. 21. State what acquaintance you have with lace manufacturers in this city and Brooklyn, and their vicinities, and with dealers in such articles, and whether such acquaintance is extensive or otherwise?

(Objected to as immaterial and indefinite.)

A. What am I to understand by acquaintance—whether you intend a personal knowledge or an intimate acquaintance; I believe I know them all—that is, the mannfacturers.

Q. 22. I mean personal acquaintance.

A. I am personally acquainted with a number of manufacturers, and personally with a number of dealers—the largest dealers, I may say, in ladies' hair nets.

Q. 23. Do you know from such acquaintance how the net you have referred to as being first brought out by Mr. Dalton,

Exhibit E, is regarded with respect to novelty by the manufacturers and dealers referred to in your last answer?

(Objected to as calling for hearsay evidence.)

A. It was regarded both as original and novel when it first came out, and it was carried around by the dealers to manufacturers as out of the ordinary line."

J. Van Santvoord

Supreme Court of the United States.

OCTOBER TERM 1876. No. 132.

JOSEPH DALTON, *Plaintiff in Error,*

vs.

ABRAHAM G. JENNINGS.

In error to the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR DEFENDANT IN ERROR.

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NEW YORK,

G. LAUTER, STEAM BOOK & JOB PRINTER, 64, 66 & 68 ANN ST., COR. WILLIAM.

1876.

Supreme Court of the United States.

OCTOBER TERM, 1876.—No. 132.

JOSEPH DALTON,
Appellant.
vs.
ABRAHAM G. JENNINGS,
Appellee.

In Error to the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR THE DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The appellant, Joseph Dalton, a manufacturer of lace goods and hosiery, did, on the fifth day of March, 1872, obtain a patent for an alleged improvement in hair nets, which is the patent upon which this suit is based. The said patent seeks to cover a head—or hair-net, containing a series of coarse threads, forming open meshes, that are traversed by a series of finer threads, which also form open meshes, the intent of the inventor being to use the finer threads, for holding down the short hair, and preventing them from protruding through the open meshes, that are formed by the coarser threads. The direction of the finer threads with reference to the position of the coarser threads is not limited in the patent, for in Fig. 6 of the drawing, attached to the patent, the finer threads are represented as crossing the larger meshes diagonally, while in the other figures, there shown, they cross the meshes in direction, parallel to the coarser threads.

As to the manner of constructing the said patented hair-net, the specification points out that they may be "*fabricated in a manner well-known to lace manufacturers;*" that the inventor does not confine himself "*to the precise method of forming the meshes,*" (although a precise method is not even described), and that the meshes may "*be composed of three or more strands, united by tying in any manner at the ties, and of varying quality and color of thread.*"

The history of the invention, as developed by the testimony, shows, that Dalton, in the summer of 1869, having then an unsalable stock of hair-nets like Exhibits O and P, on hand, all of which were made of coarse thread, but out of fashion, owing to the large openings or meshes, set himself to work, or rather set "*his wits to work*", to render them salable,

and asked his workmen, Williamson and Windley, whether they could not get up, or make a net, in which the coarse threads were crossed by finer threads; indicating to them, as Dalton testifies

Dalton, answer 7, page 62; Windley, answer 6, page 39; Windley, answer 12, page 40.

by some means that he intended the finer threads to pass through the coarser threads of his unsalable hair-nets. The workmen set themselves to work in 1869, as stated, to produce said net, but before doing so, Williamson purchased in a store in Brooklyn a fabric, of which a piece, marked Defendant's Exhibit 12, is in evidence, and which he saw exposed in the show window of said store, and bought it for a tidy.

Williamson, answers 4 and 5, page 86; answer 10, page 87; Windley, answer 8, page 40.

The structure of this tidy, these men, Williamson & Windley attempted to imitate, but they failed

Williamson, answer 15, page 87; Windley, answer 67, page 45.

and Mr. Dalton found himself unable to produce the net, which he had conceived. In the year 1870, he went to Europe—Nottingham, the seat of the lace industry, and there found a lace machine-operator, Mr. Brooksbank, to whom he stated his desire of having a net made with coarse and fine thread, and also stated to him, that his men in New York were unable to make it.

Dalton answer 33, page 66.

Mr. Brooksbank thought, that he could make such a net, and afterwards, in the year 1871, after Mr. Dalton had returned to New York, the net was made by Brooksbank, a sample of which, with a machine arranged for working it, and with a man, able to operate that machine, he had also shipped to New York.

Newbold, answer 5, page 31.

This machine arrived in New York in June, 1871, as appears from the testimony of Newbold,

Answer 3, page 31.

who was the party sent with the machine to operate the same. Newbold further testified,

Answers to Q. 70, 71 and 72, p. 36.

that Mr. Dalton had not sufficient knowledge to make the drafts which guided the workman in making the patented net on the lace machine, and that Dalton was not capable of doing the work, which he, Newbold, had made on said machine, and that, had he been capable of doing the work, he would not have sent for the said Newbold.

The testimony also shows, that in July, 1869, Mr. Jennings, the defendant, was in possession of a draft, (Exhibit 9.) and of a machine, and of workmen, capable of producing a hair-net of the kind patented by Dalton

Jennings, answers 3–6, page 96; Osborn, answer 10, page 82; answer 12, page 82; Newbold answer 38, page 34.

that in the year 1869, the defendant's workman, Osborn, made a sample of such hair-net on Mr. Jennings machine, and that further work of the same kind was made on such machine in the year 1870 or 1871, in a piece.

Osborn, answer 44, page 84; Jennings, answer 13–15, page 96.

Exhibit 9 is the design from which that fabric was made, and complainant's witnesses, Newbold and Marr,

Newbold, answer 38, page 34; Marr, answer 17, page 58.

testify, that from said design, the fabric in question can be produced.

It further appears from the testimony, that Exhibit No. 2 was known and publicly used before the year 1868

Marr, answer 18, page 58; Hooton, answer 2–3, page 78; Hall. answer 4–5, page 85; Osborn, answer 4, page 81; Jennings, answer 30, page 98; Windley, answer 39, page 42.

that Exhibit No. 10 is an ordinary hair-net of a kind made in the year 1863, and ever since

Osborn, answer 18–19, page 82; Jennings, answer 24, page 97; Brabson, answers 36, 37, 38, page 30.

that Exhibit 11 has been in public use more than ten years ago—in fact, ever since the year 1862

Roebuck, answers 4, 5, and 7, page 116; Jennings, answer 35, page 98; Newbold, answers 93–96, page 38.

that Exhibit 12 was in public use in the Spring of 1869, and then shown to Dalton

Windley, answer 8, page 40; Williamson, answer 5, page 86.

that Exhibit 16 is a common lace

Windley, answers 72, 73, page 45; Marr, answer 56, page 61; Soar, answers 35, 36, page 112.

and that Exhibit 6 was made by Hooton in June and July, 1871

Hooton, answers 9–11, page 79.

All of the fabrics, Exhibits 2, 6, 11, 12, and 16 are reticulated fabrics made of coarse threads, which form large meshes, that are crossed or intersected by finer threads, forming meshes in substantially the same manner as described in complainant's patent. There is nothing in their construction, that could render them incapable of use as ladies' hair-nets.

It also appears from the testimony that in the construction of a fabric on a lace machine, the subsequent use thereof is not, and cannot be taken into account, inasmuch as the fabrics are made or woven in large pieces, each piece containing several hundred yards, and afterwards the pieces are cut up for the uses, to which they are to be put.

See Newbold, answer 96, 97 and 98, page 38; answer 100, page 39,

It also appears

Newbold, answer 51, page 35.

that there are many kinds of lace machines, that the defendant's net is made on what is known as a Leaver's Lace Machine

Newbold, answer 34, page 33.

that, the Card Exhibit 9, indicates the work for a Leaver's Lace Machine

Newbold, answer 38, page 34.

and that the complainant's patented net is likewise made on a Leaver's Lace Machine

Newbold, answers 42–43, page 34,

that from Exhibit No. 9 a net was made on a "Warp" Lace Machine, and also on a Leaver's Lace Machine

Osborn, answers 15–16, page 82; answer 44, 45, 48, 49, page 84.

and that the patent does not mention any particular kind of lace machine.

As to Exhibit 10, it is a hair-net, made of fine thread throughout, the threads or pillars being as fine as the fine threads in the complainant's patented net, Exhibit E, and the meshes as large, as the meshes of said patented net.

The testimony also discloses the fact, which was already pointed out in the defendant's answer, that the description given by the complainant in

his patent, as to the manner of forming the meshes, to wit, that the meshes are "made of double strands, which pass through each other, as shown in Fig. 2," is erroneous, and calculated to mislead, and that Dalton's attention had been specially called to the necessity of describing correctly the way the threads go,

Dalton, answer 95, page 72; Newbold, answer 58, page 35; Soar, answer 34, page 112; Jennings, answers 46 and 49, page 99; F. Du Faur, answer 23, page 21; postcript to Exhibit U, page 77.

The proofs also show, that an English Design Patent, Exhibit No. 4, was granted in May, 1871, prior to the time of Newbold's arrival in New York with the machine and knowledge of Brooksbank.

The testimony finally shows that that part of the patent, which describes that the two sets of meshes are so connected with each other that either set can be entirely broken away without destroying the other, is a feature not contained in the net, Exhibit C, made and sold by the defendant.

See F. Du Faur, answer 5, page 14; Newbold, answer 26, page 33.

It is admitted that Exhibit C is a net of the kind, manufactured by the defendant.

POINTS.

1.—*The patent, although granted for a hair-net, is in fact, a patent for a fabric. If valid, it would cover the same fabric used for other purposes, such as veils, tidies, laces, &c.* (Curtis on Patents, § 55, § 56, § 66). *The patent is therefore anticipated, and invalidated by proof of prior use of substantially the same fabric for analogous purposes.*

For whatever would be covered by a patent will anticipate it.

Sewall vs. Jones, 1, Otto, page 183.

Phillips vs. Page, 24, Howard, page 167.

"Simply applying an old organization to a new use is not a patentable subject."

The proofs show, that Exhibit 2 has been used since 1867 for veils and other purposes. The Exhibit speaks for itself, as a hair-net, and as one having thick and fine pillars in the manner described in the patent; that Exhibit 11 has been used as a mosquito-net. It is also shown that Exhibit 12 has been publicly sold, prior to Dalton's invention, that it was bought as a tidy, but that it may also be used as a hair-net

see Windley, answer 48, page 43.

that it is old to make a fabric like Exhibit 16

Marr, answer 56, page 61.

which has the very same structure of parts as the patented fabric, and that therefore the thing patented by the complainant has been anticipated by prior public use of the same thing, for the same and analogous purposes, and that the patent is consequently void.

Tucker vs. Spalding, 13 Wallace, page 455, 456.

Brown & al. vs. Piper, 1 Otto, page 37.

Ames vs. Howard, 1 Sumner, page 487.

Howe vs. Abbott, 2 Story, p. 194.

Bean vs. Smallwood, 2 Story, p. 411.

Hotchkiss & al. vs. Greenwood & al., 11 Howard, page 248.

Bischoff vs. Wethered, 9 Wallace, page 815.

2.—*The fabric described in the patent is not a new, nor a useful invention, and not patentable in view of the prior state of the art.*

Hair-nets, or lace fabrics, having the construction of pillars or meshes like that shown in complainant's patent, without reference to the proportion of the parts, have been in public use, and generally known previous to the date of complainant's patent, or alleged invention. This the complainant admits by reference to Exhibits O, P, Q, and he only claims to have invented a net, in which some of the pillars are fine, where heretofore they were thick, or thick, where hitherto they were fine. No useful object is, or is claimed to be attained by this arrangement, even if it were new. It is only a matter of effect. Exhibit No. 10, which is admitted to be an old net, has its *meshes* or open spaces of the same size and shape as the net, complainant's Exhibit E, which is the patented net, or as the net Exhibit C, which is the alleged infringing net. In point of utility, Exhibit No. 10 is as good as Exhibits C and E. It performs the same service; it prevents the short hair from protruding; its threads are as invisible as the fine pillars of Exhibits C and E, and if its threads were made thicker, they would be as visible as the coarse threads of these Exhibits. It is certainly as strong as Exhibits C and E, even if its pillars are only as thick as the fine pillars of said Exhibits, on the same ground as the strength of a chain is controlled by the strength of its weakest link. In point of utility, therefore, no one can have any possible preference for one of the nets Exhibits C, E, or 10, provided they are made of equally good material; but as a matter of *fancy* or *fashion*, this, that, or the other may be preferred. It appears, therefore, that as to *utility*, there is none in the patented device. The complainant's fabric might perhaps have been patented as a new design, were it not for Exhibit 16 and other similar proofs of prior use of the like design, but, as the subject of a mechanical patent, the mere change of the thickness of threads, or relative proportion of parts, which does not affect any new result cannot be ranked. Moreover, the substitution of a thick thread for a finer, or of a thin thread for a thick, is the mere use of a mechanical equivalent, and a common expedient frequently practised. It does not imply invention, and does not produce any peculiar practical result. The thickness of the thread employed must be left to the judgment of the producer. He can, and frequently has used either thick or fine thread, or both together, but the mere substitution of the one of these for the other does not belong to the subject of invention, but of construction.

Dalton's patented net does not show anything novel in structure; does not describe any new construction, nor any improvement, or novel combination of parts, nor the application to the nets in question of any appliance not previously practised in the same art. He only claims the substitution of a thread finer in relation to the other threads, or coarser in the like relation, for the purpose of producing a novel, artistic, and æsthetic effect. Now the relative thicknesses of the threads are not even specified. What in one net is coarse may in another be fine, merely because the proportions vary, and yet the proportions are not specified in the patent. How much finer should a fine pillar be than a coarse one? This is not mentioned; but here is a broad claim to a net, having fine and coarse pillars.

As for *novelty*, it is known that the novelty of an invention is either in the new *manufacture* produced, or in the new *manner* of producing

an old one. If the patent is for the former, it must be for something substantially new, different from what is known before. If the latter, the mode of operation must be different, but in neither case is a mere change of proportions the subject of a patent for an invention. If both the manufacture and the mode of manufacturing are the same in principle as the manufactures and modes of operation previously practised, neither can be patented, although there may be a variation in some small matter for the purpose of evasion, or as an excuse for an application for a patent.

These remarks apply fully to the complainant's patent. It contains no novelty in itself, for invention, in the sense of the patent law, is the finding out, contriving, devising, or creating something *new* and *useful*, which did not exist before, by the operation of the intellect; and before a patent can issue or be maintained, the thing patented must appear to be of such a character as to involve or require invention for its production, *i. e.*, require the exercise of the genius of the inventor, as contradistinguished from the ordinary skill of a mechanic in construction.

Ransom vs. Mayor, 1 Fisher, pages 258 and 264.

Reed vs. Reed et al., Vol. VIII. Official Gazette, Patent Office, page 193.

Roberts vs. Ryer, 1 Otto, page 150.

Smith vs. Nichols, 21 Wallace, pages 118, 119.

3.—*The appellant Dalton, merely conceiving his alleged invention in* 1869, *did not therefore, and did not, in point of fact, make the invention for which the patent was given.*

"The invention is not made until the parties contrive, by observation and discovery, how it may be made available for its particular purpose."

Ransom vs Mayor, 1 Fisher, page 265.

Dalton never discovered *how* to make that net. He was incapable of making it. He could not instruct his men, nor others, how to make it, and was utterly incapable of producing the patented net until after Newbold came from England with the knowledge imparted by Brooksbank, and with the designs, which enabled Newbold (not Dalton) to make the said net. And yet when Newbold came in 1871, the net was already known in market, had already been described in English Patents, Exhibit No. 4, had already been made by Mr. Jennings and others, and therefore, even if there be any invention in the net, and even if it be conceded that such was Dalton's invention, it nevertheless appears that at the time the invention was actually made (in the shape of the arrival of the machine from England which would produce it), it was already in public use in this country, and patented abroad. But mere conception is not invention. The law does not authorize the granting of patents except where the inventor has *produced* a new and useful result, which is more than conception. A man may dream of a flying machine—may think it desirable to have one—but he is not the inventor of one until he shall have *constructed or devised one* capable of flying; and in like manner Dalton, who thought it *desirable* to have a net, of the kind patented by him, is NOT the inventor of such a net, for the simple reason that he never knew how to

make it, and never did make it, and because he never was able to instruct others how to produce the same.

"A mere idea or conception is not in law the subject of property."

Abbott U. S. Practice, 2d Edition, Vol. I., page 485.

4.—*The patentee intentionally and fraudulently deceived the public by a false description of the manner of producing the net, and therefore his patent is invalid under the Statute* (Sec. 61, Law of July 8, 1870).

This error in the description, which has been pointed out in the statement of the case, is not an accidental oversight, but is deliberate. The letter of Brooksbank, complainant's Exhibit U. page 77, distinctly shows that Brooksbank, the real designer of Dalton's net, does not think that there is any one engaged in the hair-net trade, *capable* of drafting the patented mesh, and that he hopes that Dalton has claimed the bobbin-thread passing with the warp across in a peculiar manner, the bobbin-thread going from one pillar to the other, as marked in red ink in the postcript to said letter. In other words, Mr. Dalton, finding, or at least thinking, that it was a difficult matter to produce that particular net, difficult, at least, to him and his men, and likewise owing to his ignorance of the art of making nets, determined in securing his patent, to take all that the patent would grant, without in return giving to the public that real knowledge which he had acquired from Brooksbank and Newbold at the time of applying for said patent. He *purposely* concealed the true description of the manner of crossing or joining the threads, and *purposely* substituted a false description, hoping thereby, probably, to remain in the undisturbed enjoyment of the coveted monopoly, even after the expiration of the patent. The patent is invalid, therefore, owing to this intended and false description.

Curtis on Patents, § 260.

5.—*The defendant does not infringe upon the patent in this, that the net, which he makes, does not contain two independent sets of meshes, of which one can be broken away without destroying the other.*

The defendant's net is like and unlike the net described in the patent, to the same extent as Exhibit No. 2 is like and unlike the patented net. Both fabrics, Exhibits 2 and C have their meshes formed of thick and thin threads, and therefore *resemble* the patented device, but in construction they differ from it, as their meshes are not so formed, that either set may be broken away without destroying the other (see F. Du Faur, answer 5, page 14; answer 28, page 21), and if this construction of the patent be relied upon as a patentable feature, it is clear that the infringement has not been, and cannot be proved, and that the bill has been properly dismissed by the Court below.

Respectfully submitted by

A. v. BRIESEN,

Attorney for Defendant and of Counsel.